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Report by Mr. Glélé-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26

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Introduction

1. This report has been submitted in accordance with resolution 1998/26 (IV) adopted by the Commission on Human Rights at its fifty-fourth session. It should be read in conjunction with the report submitted by the Special Rapporteur to the fifty-third session of the General Assembly (A/53/269).

2. In this report, which comprises six chapters, the Special Rapporteur calls attention to measures taken by Governments in order to meet the objectives of the mandate (chap. II), manifestations of racism and racial discrimination in 1998 (chap. III), the allegations he has received (chap. IV) and the follow-up to the field visits which he has undertaken (chap. V).

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Field visits

1. Mission to South Africa

3. The Special Rapporteur visited South Africa from 24 February to 5 March 1998. His findings are contained in document E/CN.4/1999/15/Add.1.

2. Mission to Australia

4. The mission to Australia scheduled for 3 to 19 May 1998 had been organized with the kind cooperation of the Australian Government, but for reasons outside the control of the Special Rapporteur and the Government it did not take place. The Special Rapporteur has nevertheless been briefed by the Australian authorities on some recent developments concerning the eradication of xenophobia and the improvement of race relations that have resulted from joint efforts by the authorities and the public. A brief outline of these developments follows.

5. The recent appearance and rise of Pauline Hanson's One Nation Party in Australia have been the cause of concern that racism and xenophobia were gaining ground in Australian society, historically acknowledged as one of the more racially tolerant societies world-wide. But, information provided by the Government of Australia reveals that a real effort has been carried out to stem this worrying trend at the political and social levels through a nation-wide anti-racism programme called "Living in harmony". This programme is aimed at educating the Australian population on racial sensitivity, particularly towards Aboriginal and migrant populations.

6. Despite running 139 candidates for the House of Representatives, the One Nation Party did not retain a single seat in the recent elections, although a considerable number of the Australian electorate did cast votes in favour of this party. Most notably, Pauline Hanson herself, the party leader and founder, lost her seat in the Federal Parliament.

7. The returning Prime Minister, John Howard, has pledged to strive towards better multicultural relations and reconciliation with the Aborigines, and has established two positions in his new cabinet to address these issues. In

a 14 October 1998 press conference, he stated that reconciliation is "an acceptance first and foremost that we are all Australians together and that our national unity and our identity as Australians is the starting point ... the indigenous people ... have an identity which is entitled to receive from the rest of the Australian community an understanding, a recognition and a respect". 1/

8. Government efforts to counter the stance taken by the One Nation Party against immigration and ethnic diversity, and to promote social harmony are reflected in several initiatives, among others, the "Living in harmony" initiative and initiatives on immigration issues:

(a) The new "Living in harmony" initiative, overseen by the Australian Department of Immigration and Multicultural Affairs, is a three-part programme to sensitize Australians on the issues of ethnic diversity and to bring together citizens of different backgrounds. This programme seeks to engage local NGO actors, businesses, communities, the media, and government agents in a multiparty, multicultural dialogue to achieve mutual understanding. A number of sub-programmes have been designed to encourage different types of organizations to take an active interest in racial harmony. "Working together in harmony" targets industrial or commercial organizations and seeks to make employers value the talents of a diverse workforce. "Working together in crisis" focuses on gaining the participation of multicultural Australians in community emergency and volunteer forces. "Winning together" concentrates on diversity and racial harmony in the context of sports competitions. "Learning to live in harmony" is an educational initiative which explores the social and economic benefits of a multicultural society. Lastly, "Believing in harmony" is a project which strives to include members of diverse religious communities in the multicultural debate. The media have also been encouraged to raise awareness of racial issues and provide a forum for debate on this subject. They will also celebrate the values that Australia shares as a nation.

(b) Initiatives on immigration issues: as immigration has been an integral part of Australia's history as a nation and one in four Australians were born overseas, immigration policy is a key and controversial issue in the national debate. One Nation used fears of overpopulation, job loss and environmental damage caused by immigrants as a major part of its platform to reduce the entry of foreigners into the country. The current Government, through the Department of Immigration and Multicultural Affairs, appears to be trying to stem the tide of fear that this debate has caused and to this end has prepared an information package on the realities of immigration for use by community leaders, organization heads, teachers, etc. It contains an historical analysis of Australia's immigration programmes and detailed statistics denoting this decade's immigration trends. In addition, the Government also provides data on the benefits to the economy that have been a direct result of immigration and diversity, as well as information on future population projections. To fight further the apprehensions spread through misinformation and ignorance on the subject of immigration, a question/answer book on the myths of immigration is included.

3. Mission to Indonesia

9. Following the riots which took place in Indonesia in May 1998, acts of violence were perpetrated against the Chinese minority in the country. The Special Rapporteur on violence against women and the Special Rapporteur on contemporary forms of racism drew attention to this problem by forwarding the communications they had received to the Indonesian Government. The Government made its comments and indicated the measures it had taken to protect the fundamental rights and freedoms of the Chinese minority in Indonesia. A joint mission by the two Special Rapporteurs was then scheduled. However, owing to previous commitments both at home and abroad, the Special Rapporteur on contemporary forms of racism was unable to take part in this mission on the dates proposed. The reply of the Indonesian Government is contained in chapter IV of this report.

B. Missions under consideration by the Special Rapporteur

10. In order to amplify his analysis of the situation in different parts of the world, the Special Rapporteur intends to visit Asia and Eastern Europe in the near future; he will also organize missions in response to emergencies in other regions, should any arise.

II. REPLIES OF GOVERNMENTS TO THE SPECIAL RAPPORTEUR'S REQUEST FOR INFORMATION

11. On 17 June 1998, in accordance with paragraphs 27 and 28 of resolution 1998/26, the Special Rapporteur addressed a circular letter to Governments, intergovernmental organizations and other relevant organizations of the United Nations system, as well as non-governmental organizations (NGOs). This chapter includes only the main points of the replies relating directly to the Special Rapporteur's mandate which were received from the Governments of Cyprus, Croatia, Cuba, Finland, Lebanon, Mexico, Portugal, Turkey and Yugoslavia. The main points of the replies from Brazil, France and the United Kingdom regarding follow-up to field visits are contained in chapter V. The full text of these replies containing additional information is available from the secretariat of the Office of the High Commissioner for Human Rights.

A. Cyprus

12. The Government of Cyprus has transmitted the main provisions of its legislation to eliminate racial discrimination. Law No. 11 (III) amending Law No. 12 of 1967 on the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1992. The amendment involved the insertion of an article that criminalized a number of acts tantamount to forms of racial discrimination. The article reads as follows:

"Article 2 (a) of Law No. 11 of 1992. Criminal offences:

(1) Anyone who, either orally, through the medium of the press or any document or representation, or by any other means, intentionally incites others to actions or activities likely to cause

discrimination, hatred or violence towards any individual or group of individuals solely by reason of their racial or ethnic origin or their religion, shall be guilty of a criminal offence and shall be liable to imprisonment for a maximum of two years or a maximum fine of 1,000 Cyprus pounds, or both.

(2) Anyone who establishes an organization or participates in an organization whose purpose is to promote organized propaganda or any activity intended to incite racial discrimination shall be guilty of a criminal offence and shall be liable to the penalties referred to in paragraph (1).

(3) Anyone who, either orally, through the medium of the press or any document or representation, or by any other means, publicly expresses ideas that are offensive to any individual or group of individuals by reason of their racial or ethnic origin or their religion, shall be guilty of a criminal offence and shall be liable to imprisonment for a maximum of one year or a maximum fine of 500 Cyprus pounds, or both.

(4) Anyone whose profession consists in supplying goods or services who refuses to serve an individual solely by reason of their racial or ethnic origin or their religion, or who sets conditions relating to racial or ethnic origin or religion, shall be guilty of a criminal offence and shall be liable to imprisonment for a maximum of one year or a maximum fine of 400 Cyprus pounds, or both."

B. Croatia

13. Article 14 of the Constitution of the Republic of Croatia guarantees everyone effective protection against all acts of racial discrimination that constitute a violation of human rights and fundamental freedoms contrary to the Constitution. To this end there are legal guarantees which ensure non-discrimination and make provision for preferential measures in areas where the identity of a particular group needs to be preserved.

14. Croatian society comprises different ethnic and religious groups and addresses their needs by promoting diversity, pluralism and integration of minorities. This is achieved by permitting each citizen to take part in the common welfare of the Republic. With this aim in mind, special attention is devoted to the exercise of human rights in the context of ethnic and national communities or minorities. The Republic of Croatia provides for the full and specific protection of all national or ethnic communities and minorities residing in its territory by guaranteeing their right to promote their customs, tradition and culture and preserve their language in both spoken and written form. These guarantees are laid down in the Constitution and further detailed in laws and by-laws. The majority of specific minority rights are guaranteed through the Constitutional Act on Human Rights and the Rights of Ethnic and National Minorities or Communities.

15. In the aftermath of the armed conflict waged against Croatia between 1991 and 1995, which unleashed ethnic and xenophobic violence and

harassment, one of the Republic of Croatia's top policy priorities has been to normalize inter-ethnic relations, especially the relations between Croats and a section of the Serb ethnic and national community or minority in Croatia. A number of confidence-building measures have been implemented in order to remove the motive of revenge and to foster greater harmony and tolerance within Croat society.

16. A wide range of legislative and practical measures has been introduced through government policies designed to promote equal opportunities at various levels of administrative, social and economic life. Some of these measures have been implemented primarily in the education system and in cultural activities.

17. Effective measures have been taken in particular in the field of education and vocational training in order to fight the prejudices which lie at the root of racial discrimination and intolerance. Since independence, the Croatian education system has undergone a major transformation; national curricula and syllabuses now reflect new principles of economic, social and political development, thereby enabling pupils to gain access to the skills and responsibilities required in a democratic society. The new curricula reflect recommendations made in the field of education, including those found in the Convention on the Elimination of All Forms of Racial Discrimination, the Universal Declaration of Human Rights and the Convention on the Rights of the Child. In addition, several projects in such areas as tolerance and human rights are being carried out in pre-school establishments and primary schools under the auspices of the United Nations Children's Fund (UNICEF).

18. Croatia also informs the Commission that it is taking all necessary measures against incitement to racial hatred in both electronic and printed media, while at the same time fundamentally protecting freedom of thought and expression and freedom of the press as guaranteed under article 38 of the Constitution. As stated above, all manifestations of racism such as racist propaganda or hate speech are constitutionally and legally forbidden. Pursuant to article 56 of the Telecommunications Act, Croatian Radio and Television is obliged to respect human dignity and fundamental human rights, in addition to promoting understanding of members of ethnic and national communities or minorities.

19. The right to equal treatment before the courts and other judicial bodies is guaranteed in article 26 of the Constitution. This constitutional right, in addition to other constitutional rights and freedoms, is protected by the Constitutional Court of the Republic of Croatia (art. 124, para. 1, of the Constitution). According to article 28, paragraph 1, of the Constitutional Act on the Constitutional Court of the Republic of Croatia, anyone may file a constitutional complaint with the Constitutional Court if he or she believes that a decision handed down by a judicial, administrative or other authority violates his or her guaranteed rights and freedoms under the Constitution.

20. In the new Criminal Code and Code of Criminal Procedure, which came into force on 1 January 1998, provisions relating to the prevention and suppression of discrimination have been strengthened by increasing the minimum level of envisaged punishment from three to six months' imprisonment, with a possible maximum sentence of five years. The provisions of previous criminal

legislation prohibiting the provocation of national, racial or religious hatred, division or intolerance, are completely covered by article 106 of the new Criminal Code.

C. Cuba

21. The Cuban Government is very concerned by the resurgence and strengthening, particularly in the developed world, of new forms of racism, racial discrimination, xenophobia and other related forms of intolerance affecting millions of people including children, women, the elderly and the disabled who, in view of their status, therefore suffer double discrimination.

22. One of the most insidious and reprehensible manifestations of racial discrimination, which cries out for immediate remedy, is discrimination and intolerance towards immigrants. In certain highly developed countries, these manifestations have become institutionalized. Even immigrants and their children whose status as residents of a country is perfectly legal are deprived of essential social, educational and health services, thereby ignoring the contribution which such citizens make to wealth creation in those countries and to the operation of the services involved through the payment of taxes.

23. Greater attention should be paid to the improper use of the media and information technology such as the Internet to spread ideas based on racial superiority or racial hatred, and the international community should take more specific action in that field. In that connection, the seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination held in Geneva from 9 to 13 September 1996 yielded commendable recommendations (see E/CN.4/1997/68/Add.1, Annex II, paras. 8-10).

24. It is worthwhile reiterating, as the Committee on the Elimination of Racial Discrimination has acknowledged in its recommendation XV adopted at its forty-second session on 17 March 1993, that the prohibition of racist and xenophobic ideas constitutes a legitimate and necessary limitation on freedom of opinion, expression and association, all of which entail specific obligations and responsibilities.

25. The Cuban Government shares the Special Rapporteur's concern regarding the inadequate implementation of the activities provided for in the Programme of Action for the Third Decade; it too believes that the reason is a lack of interest on the part of the principal donor countries, whereas financial resources are selectively allocated to other human rights activities in the interests of a restricted group of countries. Some of the effective activities contained in the Programme of Action need to be relaunched and implemented without delay; if this is not done, the problem will worsen and become practically impossible to rectify.

26. Cuba supports the recommendation of the Commission on Human Rights that 2001 should be declared a year of mobilization against racism, racial discrimination, xenophobia and related intolerance with a view to focusing international attention on the objectives of the World Conference. It also associates itself with the proposal that the activities of the Programme of Action for the Third Decade should be focused towards the preparatory process

for the World Conference, and, in this regard, the High Commissioner for Human Rights should organize symposia, seminars and worldwide consultations in 1998, 1999, 2000 and 2001 on racism, racial discrimination, xenophobia and related intolerance.

D. Finland

1. General

27. Measures to prevent racism and ethnic discrimination have been central subjects of discussion both internationally and nationally in the latter part of the 1990s. Attention has been paid to racism in the United Nations, the Council of Europe and in Nordic institutions. In 1997, the European Year Against Racism, a European centre to monitor racism and hostility towards aliens was established. Finland is itself creating a national mechanism to monitor racism.

28. The Advisory Board on Migration and Refugee Affairs, currently the Advisory Board for Ethnic Relations (ETNO), operates under the Ministry of Labour as a negotiating body between ministries and NGOs working in the field (see also paras. 41-44 below). From 1995 to 1997 the Board ran a tolerance campaign, the main purpose of which was to finance various kinds of grass-root projects promoting tolerance; altogether, 124 projects received funding. Many of these aimed to increase public knowledge about immigrants' rights, human rights and the value of multiculturalism. Within the framework of the campaign, and through the intermediary of the Advisory Board, Finland participated in a project run by the International Labour Organization concerning discrimination in the workplace.

2. Legislation

29. The Constitution Act of Finland states that basic human rights extend to all persons within the jurisdiction of Finland regardless of nationality. Article 5 of the Constitution states that everyone is equal before the law. No one shall be treated differently by reason of sex, age, origin, language, religion, beliefs, opinion, state of health, disability or other personal reason without extenuating circumstances. Equality between the sexes is promoted in society and at work, particularly with respect to wages and other terms of employment, as further specified by law. Exceptions have, however, been made concerning the rights of non-nationals, for example in connection with their entry into and residence in Finland.

30. Anyone who is unable to acquire for himself the basic necessities for a humane existence has the right to a minimum income and welfare support. Legislation guarantees everyone the right to basic income security, for instance, during periods of unemployment or disability (art. 15 (a)). This means that basic income security is also provided in this kind of situation for people other than Finns or nationals of the European Economic Area who are resident in Finland.

31. The Criminal Code (578/1995) defines discrimination, and specifically discrimination in the workplace, as a crime. Under article 3, paragraph 47, discrimination in the workplace is punishable by a fine or six months in

prison for an employer or the representative of an employer who, in advertising a vacancy, choosing a new employee or in the course of employment, places an applicant for a job or an employee in an unfavourable position without a substantive or acceptable reason.

32. Non-nationals are subject to the Finnish labour legislation. The labour protection authorities also supervise the implementation of the terms of the employment contract for non-nationals. According to the legislation, employers must provide assurance to the labour authorities dealing with work permit applications that the wages of a non-national and his other employment terms are in keeping with the collective agreement currently in force or, if there is no collective agreement in the field in question, that they correspond to the practices applicable to Finnish workers.

33. In a situation where the employer is insolvent, employees have the option of receiving their wages and other employment benefits in the form of pay security. This also applies to non-nationals. Employees can also apply for their benefits from the employer through court proceedings.

3. Measures taken by the Ministry of Labour

34. The Ministry of Labour, together with the Ministry of Education, is responsible for preventing racism. Issues concerning promotion and coordination of tolerance and good ethnic relations in society and in administration, as well as contacts with civic organizations working in the field, are the province of the Ministry's Migration Division. This Division was established on 1 March 1997 with the purpose of unifying the administrative departments responsible for issues related to migration and to promote the integration of immigrants into Finnish society.

35. In the Council of State decision-in-principle against racism, various ministries were given tasks. On this basis, the working group set up by the Ministry of Labour, consisting of representatives of the relevant ministries and the Finnish League for Human Rights, has made a proposal to establish a mechanism to monitor racism. This will be set up in 1998-99 and consist of various entities reporting to different administrative branches.

36. It has been suggested on various occasions that a position of discrimination attorney should be established in Finland. The Ombudsman for Aliens has a central role in securing the status of aliens. When he discovers discrimination against an alien, he issues advice and instructions designed to stop it or prevent it from recurring. The Ministry of Labour has set up a working group whose task is to make proposals for expanding the scope of the Ombudsman's activities to cover supervision and promotion of the implementation of the principle of non-discrimination towards all ethnic minorities.

37. The authorities support integration of immigrants intending to reside permanently in the country. A proposal for a law on the reception of asylum-seekers and integration of immigrants was placed before Parliament in spring 1998. It includes proposals for integration plans, integration support and the duties of public authorities concerning reception and integration.

38. In 1997, the Ministry of Labour focused on improving immigrants' ability to operate in society. In cooperation with civic organizations, it organized training sessions at which immigrants learned about association activities, fund raising, project planning, etc. Civic organizations were very active in this project and many of them added various kinds of training courses for immigrants to their action plans.

39. A training session for immigrants, NGO activists and various authorities was organized jointly with the Finnish Red Cross in April 1997 to raise awareness of discrimination against ethnic groups, discuss how to prevent it and encourage people to take local initiatives to monitor and prevent discrimination.

40. The Ministry of Labour and the Advisory Board on Refugee and Migration Affairs have participated in surveys on attitudes towards immigrants. A study financed by various ministries on attitudes of civil servants involved in refugee and migration affairs in the ministries dealing with these affairs was launched in spring 1998.

4. Advisory Board for Ethnic Relations (ETNO)

41. The Advisory Board on Refugee and Migration Affairs is currently called the Advisory Board for Ethnic Relations (ETNO). The change of name reflects the fact that the scope of ETNO's tasks has been broadened. ETNO serves as a broadly-based advisory body in affairs relating to refugees, migration, racism and ethnic relations. The Advisory Board's mandate lasts from 15 May 1998 to 14 May 2001.

42. As a cross-administrative body, the Board assists the ministries in coordinating refugee and migration affairs and developing, planning and monitoring refugee and migration policy. It also promotes interaction between authorities, civic organizations working in the field, immigrants and ethnic minorities. It has created, developed and supported measures to promote immigrants' integration into society, as well as tolerance and good ethnic relations in society, especially in working life.

43. Equality before the law, as provided for in section 5 of the Constitution (969/1995), applies to all persons within the jurisdiction of Finland regardless of nationality. According to article 11, paragraph 3, of the Constitution, it is the duty of public authorities to promote opportunities for individuals to participate in the activities of society and influence the decisions which affect them. Furthermore, according to article 14, paragraph 2, the Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own languages and cultures.

44. The Roma and the Sami have their own bodies of representation, but the Advisory Board also consults these groups in matters concerning all ethnic minorities, for example at its annual meeting. Representatives of the minorities are also invited to attend working group meetings to enhance cooperation and communication and provide them with opportunities to influence decision-making.

E. Lebanon

45. The preamble to the Lebanese Constitution stipulates that Lebanon is a democratic republic founded on respect for public freedoms, in particular freedom of opinion, freedom of belief, social justice and equality of the rights and duties of all citizens without distinction or preference. It also lays down that the Lebanese State subscribes to the principles contained in the Universal Declaration of Human Rights and applies them in all fields without exception.

46. Lebanon acceded to the Convention against Discrimination in Education adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris on 14 December 1960 (Law No. 16/64 of 19 February 1964). It has also acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (Law No. 44/71 of 24 June 1971).

47. The Criminal Code prescribes one to three years' imprisonment and a fine for any act, written material or speech intended to provoke sectarian or racist reaction or encourage conflicts between the different faiths and components of the nation. Any member of an association having the same aims as those referred to above is liable to the same penalty.

48. In the light of the aforementioned, Lebanese law guarantees the exercise of the fundamental human rights contained in the international instruments ratified by Lebanon, free of all discrimination.

F. Mexico

49. The Government of Mexico stated that it attaches special importance to combating racial discrimination, contemporary forms of racism and all forms of discrimination and intolerance.

50. Article 1 of the Political Constitution of the United Mexican States stipulates that "everyone shall enjoy the guarantees afforded by this Constitution", in other words, the State shall protect its nationals regardless of race, sex or any other circumstance.

51. The Government of Mexico recalled that, in various forums, it has expressed its concern at the growing racist practices against migrants. They have, in particular, affected a large number of Mexican migrant workers, who have been the victims of racist incidents of various kinds. The Government of Mexico stressed that migration between Mexico and the United States has been the subject of an increasingly anti-immigrant attitude. The expressions of xenophobia encouraged by political initiatives such as S.O.S. (Save Our State), later Proposition 187, set the standard in turning the subject of migration, and the anti-immigrant initiatives that went with it, into a national issue. Such signs of racism have been directed at Latin American migrants in general and at Mexican migrants in particular. The anti-immigrant platform is being used for both political and electoral purposes and to justify xenophobic actions by individuals and civil

associations. The political and electoral platform has emphasized the migrants' cost to society, yet has omitted their very important contributions in the cultural, scientific, technical, social and economic fields.

52. The anti-immigrant climate in various parts of the United States in recent years has made for more protection work by the 42 Mexican consulates in that country. Cases in which Mexicans in the United States have suffered from xenophobia and racism are on the increase. In some instances, the way in which these incidents occur makes it difficult to determine whether they involve outright racism or whether xenophobia is the issue. For protection purposes, what is important is to treat each case immediately and make the local authorities aware of the rise in xenophobia and racism; distinguishing between the two is of secondary importance. Consequently, it is difficult to give an exact figure for cases of xenophobia, but it can be said that hundreds of such cases come to the attention of the Mexican consulates in the United States every year.

53. In some cases of violation of the human rights of Mexicans in the United States, the acts in question have been accompanied by openly xenophobic attitudes on the part of the authorities. The authorities involved are generally members of the local police force who have erroneously interpreted the anti-immigrant climate and legislative changes as a national rejection of immigrants justifying such actions. However, there have also been more serious cases in which racist and xenophobic attitudes have become the basis for community policy in certain areas.

G. Portugal

54. According to the Eurobarometer opinion survey on racism and xenophobia, conducted from 25 March to 29 April 1997 and published by the European Commission at the end of 1997, the Portuguese are the European Union nation who consider themselves to be the least racist: 58 per cent of Portuguese state that they are not racist, as opposed, for example, to 49 per cent of Spaniards, 42 per cent of Swedes, 17 per cent of Danes and 19 per cent of Belgians. Twenty-five per cent of Portuguese say they are not very racist, 14 fairly racist and 3 totally racist.

55. The following are the measures taken to combat social exclusion, racism and racial discrimination directed against immigrants and national ethnic minorities, especially the Gypsies, who are the main victims of racial discrimination:

1. Establishment of the Office of the High Commissioner for Immigration and Ethnic Minorities

56. The Office of the High Commissioner is a national body attached to the Office of the President of the Council of Ministers, which enjoys special authority through its direct relations with the Prime Minister. One of its responsibilities is to help ensure that all citizens legally residing in Portugal enjoy dignity and equal opportunity, with a view to eliminating discrimination and combating racism and xenophobia (Decree-Law 3-A/96 of 26 January 1998).

2. Establishment of the Working Group for the Equality and Integration of the Gypsies

57. In view of the fact that Portuguese Gypsies are the main victims of racial prejudice and that many of them are in situations of social exclusion, the Government, through Council of Ministers resolution 175/96, decided to establish the Working Group for the Equality and Integration of the Gypsies, an advisory body which reports to the Office of the High Commissioner for Immigration and Ethnic Minorities. The Working Group is responsible for producing a detailed analysis of the difficulties encountered in integrating the Gypsies into Portuguese society and for preparing a set of proposals aimed at helping to eliminate situations of social exclusion (resolution 46/97).

3. Special campaign for regularizing foreigners in an irregular situation

58. A campaign for regularizing the status of illegal immigrants was held from 11 June to 11 December 1996. Act No. 17/96 of 24 May establishing the regularization process, was a necessary but as yet insufficient step towards eradicating poverty; it contributed to the integration into Portuguese society of citizens of immigrant origin who had previously been in situations of serious social exclusion.

4. Respect for the right to housing

59. Special Relocation Programmes (PERs) have been established and protocols concluded with various municipalities for the purpose of ensuring the right to housing free of discrimination (based on nationality or ethnic group). Decree-law No. 79/96 of 20 June, better known as "the family PER", established a system of aid for the purchase or renovation of housing for families covered by the PER in the Lisbon and Porto metropolitan areas.

5. Right of foreigners to vote and to stand as candidates

60. Act No. 50/96 of 4 September 1996 incorporated into domestic legislation European Council Directive 94/89/EC of 19 December concerning the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the European Union residing in a member State of which they are not nationals, which also grants the right to vote and to stand as a candidate in municipal elections to other foreigners residing in the national territory, in particular citizens of Portuguese-speaking countries. The granting of so-called "local citizenship" to foreigners residing in Portugal, taking into account the need for reciprocity under article 15-4 of the Constitution, has created conditions for significant progress in combating social exclusion.

61. Under the Act, the right to vote and to stand as a candidate has been granted to citizens of member States of the European Union and of Cape Verde, Brazil, Peru and Uruguay, and the right to vote has been granted to citizens of Norway, Argentina and Israel. The fact that more than 10,000 Cape Verde citizens have registered to vote in local elections is an indication of their desire to be fully-fledged citizens.

6. Action to combat racism

62. In the framework of action to achieve a non-racist society, Act No. 20/98 of 12 May establishing labour regulations for foreigners in Portuguese territory aims at eliminating discrimination in the recruitment of foreign workers holding permits to reside and work in Portugal and at combating illegal labour. The Constitution prohibits the establishment of racist organizations or organizations which adhere to the fascist ideology (art. 46), and provides that members of Parliament who join such organizations or adhere to the fascist ideology shall be removed from office (art. 160.1).

H. Turkey

63. The Turkish Government is concerned that, despite continuing efforts to increase the vigilance of Governments and arouse international public opinion, contemporary forms of racism and racial discrimination, in particular against Blacks, Muslims and migrant workers, and xenophobia, anti-Semitism and related intolerance, continue to exist and even grow in magnitude by adopting subtle new forms. Contemporary forms of racism and racial discrimination are among the most serious violations of human rights, given that, in the case of racism, victims are totally unaware of the racists' ill-feelings and the lurking danger which could lead to a loss of life. Those forms of racism must be therefore combated by all available means. Impunity for crimes motivated by racist and xenophobic feelings weakens confidence in the State and the rule of law and contributes to the recurrence of such crimes.

64. The Government of Turkey is particularly concerned at the situation of migrant workers and their families living in Europe. It believes it is most unfortunate that, despite the sensitivity of the Western European countries to the need to protect and promote human rights throughout the world, an environment continues to exist in those countries in which racism and racial discrimination continue to manifest themselves, sometimes in very discreet ways, through the behaviour of public servants or before the eyes of Governments. Migrant workers and their families constitute one of the groups of the contemporary world most vulnerable to racism and will remain so until they are given effective, special international protection.

65. The misuse of the new communication technologies, including Internet, by racist groups against their targets has become a new and complex element of dissemination of hate speech. These new technologies are being used for incitement to violence based on ideas and theories of the superiority of one race or group of persons of one colour. In this context, the Government of Turkey believes that consideration must be given to the Committee on the Elimination of Racial Discrimination General Recommendation XV (42), of 17 March 1993, on article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, in which the Committee concludes that the prohibition of the dissemination of all ideas based on racial superiority or hatred is compatible with the right to freedom of opinion and expression as embodied in article 19 of the Universal Declaration of Human Rights. Against this background, the Turkish Government believes that developing an ethic for the use of such technologies does not impinge on freedom of expression in any

way, and it commends all States which opt to penalize harmful propaganda, including propaganda disseminated by electronic means, thereby helping to combat racist opinions.

66. Another cause for concern is the rise of racist and xenophobic ideas in the political field: in Europe, some political parties are making increasing use of such ideas, particularly targeted at migrant workers. If unchecked, this emerging trend might become strong enough to provide a solid base for making racism a legitimate official doctrine, even in the post-apartheid era.

I. Yugoslavia

67. Yugoslavia drew attention to its constitutional and legal provisions prohibiting racism, racial discrimination and other forms of discrimination on the basis of nationality, gender, language, religion, political or other beliefs or social origin. Article 20 of the Constitution stipulates, in particular, that citizens are equal irrespective of their nationality, race, sex, language, faith, political or other beliefs, education, social origin, property or other personal status. Everyone is equal before the law. Each person is duty-bound to respect the rights and freedoms of others and is responsible for them. The Constitution of the Republic of Serbia (art. 20) and the Constitution of the Republic of Montenegro (art. 15) contain similar provisions which basically take up the same concepts concerning the equality of citizens. All the freedoms and rights recognized and guaranteed under the Constitution of Yugoslavia enjoy judicial protection.

1. Rights of members of national minorities

68. Apart from universal freedoms and human and citizen's rights, under the Constitution members of national minorities enjoy special rights, the exercise of which is specifically provided for. The Constitution contains nine provisions directly relating to the members of national minorities, covering the following rights and freedoms: right to equality, regardless of nationality; right to preserve, develop and express ethnic, cultural, linguistic and other characteristics; right to use national symbols; right of members of national minorities to official use of their language in spoken and written form together with the Serbian language, in the regions where they live; freedom to express or not to express their nationality and freedom to express their national culture; right to the use of their mother tongue in spoken and written form and to an interpreter in court proceedings and other administrative proceedings; right to education in their mother tongue; right to information media in their mother tongue; right to establish educational and cultural organizations or associations; right to establish unhindered relations with co-nationals within Yugoslavia and in other States and to take part in international non-governmental organizations, provided those relations are not detrimental to Yugoslavia or to a member republic.

69. Under article 50 of the Constitution, members of national minorities are entitled to special protection and it is prohibited and punishable to incite or encourage national, racial, religious or other hatred and intolerance. Such acts are considered to be criminal offences (Penal Code, art. 134): instigating national, racial and religious hatred, enmity or intolerance is punishable by five years' imprisonment. If such criminal offences are

accompanied by coercion, abuse or threat to safety by exposure of national ethnic or religious symbols to ridicule, damage to other persons' property or desecration of monuments, memorials or graves, punishment consists of imprisonment from 1 to 10 years.

70. The most severe forms of incitement to national, racial and religious hatred, enmity or intolerance are those involving abuse of authority, and are punishable by imprisonment from one to eight years; should such acts cause riots, violence or other grave consequences for the joint life of nations and national minorities living in the Federal Republic of Yugoslavia, they are punishable by imprisonment from 1 to 10 years. The said criminal offences may be:

(a) Violation of fundamental human rights and freedoms recognized by the international community on the basis of race, skin colour, nationality or ethnic origin, which is punishable by imprisonment for six months to five years;

(b) Persecution of organizations or individuals for advocating equality among men, which is punishable by imprisonment for six months to five years or

(c) Spreading ideas based on the superiority of one race over another, advocating racial hatred or instigating racial discrimination, which are punishable by imprisonment for three months to three years.

71. The Penal Code of the Republic of Serbia (art. 100) and the Penal Code of the Republic of Montenegro (art. 83) stipulate that any act publicly exposing a nation, national minority or ethnic group in Yugoslavia to ridicule is punishable by up to three years' imprisonment.

2. Racial Discrimination

72. The criminal offence of racial and other forms of discrimination (Penal Code of Yugoslavia, art. 54), involving a violation, on the basis of race, skin colour, nationality or ethnic origin, of the fundamental human rights and freedoms recognized by the international community, is punishable by six months to five years' imprisonment. The same penalty is prescribed for cases of persecution of organizations or individuals advocating equality among men; spreading ideas based on the superiority of one race over another, advocating racial hatred or instigating racial discrimination are punishable by three months' to three years' imprisonment. Under the Penal Code of Yugoslavia and of the member republics, violation of the equality of citizens is considered to be a criminal offence. The acts characterized as offences under the three Codes are identical, the only difference being the capacity of the perpetrator.

3. Language in spoken and written form

73. The Constitution of Yugoslavia guarantees members of national minorities the following rights: right to preservation and to official use of their mother tongue in spoken and written form; right to use their mother tongue in spoken and written form and right to an interpreter's services in court

proceedings and in State bodies and organizations which perform public functions; lastly, the right to education and public information in their mother tongue. The constitutions of the member republics contain similar provisions. Under the Penal Code of the Republic of Serbia (art. 61) and the Penal Code of the Republic of Montenegro (art. 43, para. 2), anyone who denies or restricts citizens' right to use their mother tongue in spoken and written form is liable to a prison term of up to one year.

III. CONTEMPORARY MANIFESTATIONS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

A. Activities of the far right and neo-Nazi movements

74. The association S.O.S. Racismo of Portugal has provided the Special Rapporteur with documents indicating a resurgence of activity by far right organizations in Portugal. 2/ Africans and Gypsies are the main victims of this situation. The Extreme right in Portugal is characterized by skinhead groups and self-formed citizen militias. The militias are usually formed with the aim of stopping drug-trafficking in certain neighbourhoods, but often result in the expulsion of the Roma populations, who are seen to be the main source of drugs in these neighbourhoods, although they are often completely innocent. The skinhead movement started in 1985 in Portugal, but has really started to gain adherents during the 1990s. The main organ responsible for coordinating skinhead activities, which are split among various groups throughout the country, is the national organization/political party, Movimento de Acçao Nacional (MAN). Additionally, MAN is in communication with several similar groups in other countries: the Democratic Party of Germany (NPD), the Nouveau Front in Switzerland, the National Front in the United Kingdom, the Third Position in Italy, and the Phalange in Spain. These organizations generally focus their hatred and violence on immigrant populations from Africa, and on the Roma and the Jewish populations. In total, 32 different skinhead organizations have been identified in Portugal.

B. Discrimination against Blacks (negrophobia)

75. According to the organization Espacio Afroamericano de Colombia, cases of discrimination have been reported in the Choco region of Colombia, along the Pacific coast. An Afro-Colombian leader whom the Special Rapporteur met when he visited Colombia in 1996, Mr. Francisco Hurtado, was murdered on 16 February 1998, one of a number of acts of violence committed by paramilitary units. Paramilitary organizations working together with the local authorities are allegedly suspected of seeking to recover land given to the Afro-Colombians under "Act No. 70/93".

76. In his preceding reports to the Commission and General Assembly (A/51/301, paras. 34 and 35; E/CN.4/1997/71, para. 125), the Special Rapporteur referred to alleged racial discrimination against the Falashas, or Ethiopian Jews, in Israel. One indication of that situation was the revelation in January 1996 of the fact that blood donated by members of the Falasha community for transfusions had, without the donors' knowledge, been put aside to be destroyed on the ground that it might be AIDS-infected. The Israeli Government promised to provide the Special Rapporteur with the results of an inquiry conducted by the commission established in response to the

Falashas' protests, but he has received no information to date. Nevertheless, he was pleased to learn that, for the first time, a member of the Falasha community, Mr. Addisu Messele, had been elected to the Israeli parliament, which is an indication of progress in the integration of the Falashas into Israeli society.

C. Racism and racial discrimination against Arabs

77. The Special Rapporteur has received communications from the American-Arab Anti-Discrimination Committee in which the members of this organization expressed the concerns of the Arab-American community about a film, "The siege", due to be released by 20th Century Fox in November 1998. Members of this community state that they have experienced high rates of discrimination since the Gulf war and in the immediate aftermath of the Oklahoma City bombing. They fear that this film will only promote further negative stereotypes of their ethnicity in the United States and lead to more hate crimes and discrimination directed against them. The Arab-American community requests that 20th Century Fox work with it to eliminate these negative stereotypes. The Special Rapporteur draws the attention of the Government of the United States to this request and asks it to bring the matter to the attention of the film's producers in order that they may do everything possible to eliminate any sequences which might cast a negative light on Arabs in general and Arab-Americans in particular.

D. Anti-Semitism

78. According to a report published by Tel Aviv University, 3/ while major attacks on Jewish communities worldwide (i.e. arson, bombings, killings) have risen since 1996, they are still at much lower levels than in 1994. The section of the report which delineates the situation in Eastern Europe and the former Soviet Union paints a bleak picture of the situation with regard to anti-Semitism. In this area, there is a vigorous resurgence in the post-Communist years of ultra-right-wing groups which thrive on revived nationalist feelings and the recreation of past victories of Nazi or Fascist groups, such as the Arrow Cross in Hungary, the Ustascha in Croatia, and the State of Tiso in Slovakia. The report alleges that in the Baltic States, police and other law enforcement agencies do very little to uphold the laws designed to curb anti-Semitism.

79. Allegedly, anti-Semitism is worst in Belarus and the Russian Federation. In May 1997, in Belarus, a cemetery was desecrated in Viterbsk and there was an arson attack on a Jewish community centre in Minsk on 10 May. In Russia, there are strong ties between political elites and the ultra-nationalist movements, which often leads to discrimination against Jews in the public economic sector. More direct attacks on the Jewish community receive little attention, either from the press or the judicial system. Violence directed against the Jewish population in the past year includes a physical assault in June on Valentin Osotski, a literary critic and researcher of anti-Semitic movements, and a similar assault in May on three Moscow yeshiva students. There were also several bombings of synagogues at Buinaksk in February 1998 and at Pernin in July 1998, and a Molotov cocktail was thrown at a Jewish school in Nalchick in January 1998.

E. Discrimination against the Roma, Gypsies or travellers

80. The Special Rapporteur, in his preceding reports, drew the Commission's attention to discrimination against the travellers. He has received information from the European Roma Rights Center assessing the situation. The Roma, or Gypsy, populations of Europe have long been victims of some of the harshest racial discrimination on the continent, as evidenced in the large number of the Roma exterminated during the Holocaust. Since the 1989 fall of Communism, and the subsequent liberalization of Eastern Europe, many of the safety nets which existed under Communism to ensure equal access to public services for the Roma have disappeared. Additionally, as low-skill jobs have become more and more scarce in the region, there has been a rise in violence directed toward the Roma populations. There are three broad categories of human rights violations confronting Roma in Europe today: police violence; racially-motivated violence by skinheads and other private parties; and systematic racial discrimination.

1. Police violence

81. Police violence targeting Roma occurs in almost all countries of Central and Eastern Europe; there are occasional cases in Western Europe as well. Police abuse is most pervasive in Bulgaria, Romania, Slovakia, Greece, Macedonia, Hungary, Ukraine and the Federal Republic of Yugoslavia. Police violence takes two principal forms: police raids and custodial abuse. In some areas, the police make special raids on Roma communities - armed assaults in the early hours of the morning, during which houses are searched, the contents ransacked, inhabitants, including women, the elderly and children, harassed or subjected to excessive force, and men rounded up for arrest and questioning, usually without search and arrest warrants. In many cases, police officers readily admit that such raids target Roma communities, because Roma, as a group, are said to be prone to criminality. As recently as 27 and 28 October 1998, the police carried out two consecutive raids on Roma in the village of Hermanovce, in eastern Slovakia. In a similar raid on 29 June 1998, in Sruleti, in south-eastern Romania, a police officer shot 31-year-old Gabriel Mihai, seriously wounding him in the spine and leg. Police abuse of Roma in custody is widespread in Bulgaria, Greece, Macedonia and Ukraine. Since 1992, at least 14 Roma men in Bulgaria have died after having last been seen alive in police custody, or as a result of the unlawful use of firearms by law enforcement officers. Fifteen cases of police ill-treatment have recently been documented in Hungary and 12 in Yugoslavia. As a rule investigative and judicial remedies are rare.

2. Violence by skinheads and others

82. Racially-motivated anti-Roma violence by skinheads and others is widespread in the Czech Republic, Bulgaria, Poland, Slovakia and the Federal Republic of Yugoslavia. In the Czech Republic, on 15 May 1998, skinheads killed a 40-year-old Roma man in Orlova; in Vrchlabi, a woman was thrown into a river and drowned. Another case is the alleged killing of Metodi Rainov, aged 15, who was reportedly thrown out of the window of a building by a skinhead after a group of skinheads attacked a structure where Roma children were known to spend the night. This event allegedly occurred on 15 May 1998,

in Sofia, Bulgaria. Often when violence such as this is inflicted against Roma populations, even when the perpetrator is known, no action is taken by the police to rectify the situation.

3. Systematic racial discrimination

83. Roma suffer systematic racial discrimination in virtually all spheres of public life, education, employment, housing, access to public space and access to citizenship.

Education

84. In the Czech Republic, Slovakia and Hungary, for example, disproportionate numbers of Roma children are relegated to second-class educational facilities - "special schools" - designed for pupils said to be suffering from intellectual or behavioural deficiencies. The result is a system of de facto racial segregation in education. In Tiszavasvari, Hungary in 1997, Roma and non-Roma children were assigned to separate classes, required to eat in the cafeteria at different times, and graduated in separate ceremonies.

Public space

85. Roma in Europe are systematically denied entrance to pubs, restaurants, discos, sports arenas and other public places. Recent instances of racial exclusion have been recorded in the Czech Republic, Hungary, Macedonia, Poland, Romania, Slovakia, Finland, Spain and Sweden.

Citizenship

86. Discrimination against Roma is of particular concern in the Czech Republic and Macedonia. The five-year criminal record requirement in the Czech citizenship law, inadequate efforts to publicize the possibility of a waiver, as well as discriminatory and inconsistent application of the law's provisions, have deprived thousands of Roma previously resident in the Czech Republic of citizenship and its attendant benefits - holding government office, voting, obtaining social benefits - and have exposed them to a criminal sentence of expulsion upon conviction of a crime. Similarly, in Macedonia, the 1992 citizenship law imposed, in breach of European standards, a 15-year-residence requirement, a physical and mental health precondition, and unreasonably high administrative fees. As a result, thousands of Roma who have genuine and long-standing ties to the territory of Macedonia are currently, de jure or de facto, stateless in their own land.

87. The Special Rapporteur is saddened by this region-wide trend towards discrimination against this ethnic group. He hopes Eastern European Governments will take the initiative of addressing this question and take positive steps towards educating their citizens and security forces on issues of multiculturalism and tolerance. He is considering using his mission to eastern Europe to focus on the study of discrimination against Gypsies.

F. The question of the untouchables in India

88. In 1996 the Special Rapporteur's attention was drawn to the situation of the Dalits or untouchables in India (E/CN.4/1997/71, para. 127). Given the complexity of the question, the Special Rapporteur consulted the Indian Government, undertook documentary research and studied the position of the Committee on the Elimination of Racial Discrimination on the question. The basic question was whether the age-old caste system in India, which had produced several million untouchables, could be regarded as racial discrimination.

89. In its appearances before the Committee on the Elimination of Racial Discrimination and its communications to the Special Rapporteur, the Indian Government has consistently held that the caste system is not a hierarchical system based on race. The following five paragraphs, which are taken from the Indian Government's communication of 30 September 1997, illustrate this position.

90. History has made India home to people of diverse origins. Over the millennia, the assimilative character of the Indian civilization combined with the process of intermingling of inhabitants after waves of immigration has resulted in a composite society. A variety of racial sources have therefore contributed to the "mix" that is the hallmark of the Indian people today. The fusion of these diverse racial elements over centuries has meant that Indian society is neither racially nor ethnically homogenous. Categorical distinctions of "race" or "national or ethnic origin" have ceased to exist and race itself as an issue does not impinge on the consciousness or outlook of Indian citizens in their social relations. Today India is a mosaic of different groups who seek identification in terms of language, religion, caste or even regional characteristics, rather than race, colour or ethnic origin.

91. The term "caste" denotes a "social" and "class" distinction and is not based on race. It has its origins in the functional division of Indian society during ancient times. A hierarchical arrangement is the principal characteristic of this social institution in which certain privileges or disabilities are enjoined on its members from birth and are not supposed to change during a person's lifetime. Each caste group is functionally dependent on the other caste groups and has a well-defined role in a social set-up based on a symbolic relationship between persons belonging to different castes. Racial hierarchy appears as an aberrant adjunct to the main structure of society, while the multi-segmented and intricately ranked social grouping of castes has been the central principle of a functional organization of Hindu society. Further, there is ample evidence of persons belonging to different castes having the same racial characteristics.

92. Communities which fall under the category of "Scheduled Castes" are unique to Indian society and its historical process. They comprise persons who were excluded from the caste system and subjected to severe discrimination in ancient India. These persons were treated as "untouchables" and social and physical contact with them was shunned by the dominant castes.

93. The first enumeration of the former "untouchable" communities was carried out during a census in 1931 under British rule. Based on the

definition evolved for the purpose at that time and reports of several commissions and committees since independence, the criterion generally followed for the specification of communities as Scheduled Castes has been "extreme social, educational and economic backwardness arising out of the traditional practice of untouchability".

94. "Race" has thus never been a factor in the process of identification and determination of the communities which constitute Scheduled Castes. Persons who belong to the Scheduled Caste communities are today considered different from others because of their social, economic and educational backwardness, not because they belong to a separate "race".

95. The Indian Government also indicates that constitutional, legislative and institutional measures have been taken to prohibit discrimination based on membership in a caste with regard to access to public places and provision of goods and services and to abolish untouchability (Constitution, arts. 15 and 17). The Constitution also guarantees equality before the law (art. 14) and equal opportunity of access to public employment, although the State is permitted to (a) make reservations concerning appointments or posts in favour of any backward class of citizens and (b) institute reservations in matters of promotion for Scheduled Castes and Tribes (art. 16).

96. A National Commission on Scheduled Castes and Scheduled Tribes was also established, one of its goals being: (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or under any other law; (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes; (c) to participate in and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any state.

97. According to the 1991 census, 138.2 million persons belonged to the Scheduled Castes (16.48 per cent of the estimated population of 846.3 million at the time) and 67.8 million to the Scheduled Tribes (0.08 per cent of the population).

98. The organizations representing the untouchables or Dalits recognize the progress achieved on their behalf since India's independence, but point out that the group's situation continues to be difficult. According to these organizations, while the average literacy rates in India (for men and women, respectively) were 63.8 per cent and 39.42 per cent in 1992, among Dalits the averages were only 29.7 per cent and 18.05 per cent). 4/ There are currently about 115 million Dalit child labourers, 20 million of whom work under dangerous conditions. Additionally, in 1996 more than 1,200 Dalit children died from malnutrition in Maharashtra state. 5/ According to several sources, the Dalits are most often the victims of forced relocation, arbitrary detention and summary execution in India. The Dalit Liberation Education Trust asserts that, "every hour two Dalits are assaulted, every day three Dalit women are raped, two Dalits are murdered, two Dalit houses are burnt in India". 6/

99. In the rural areas especially, the practice of untouchability is said to be very much alive and is reflected in segregated housing, with the Dalits forced to live at least 1/2 km from the rest of the villagers, and in the prohibition for them to use the wells, the shared water source. Segregation also reportedly exists in the schools, public services and public places (shops, hairdressers and public transport; in restaurants, dishes used by Dalits are sometimes separated from those used by the higher castes).

100. Given, on the one hand, the above-mentioned information, particularly as it relates to the constitutional provision cited by the Indian Government in its communication of 30 September 1997 - "Under article 366, the Scheduled Castes are defined as 'castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of the Constitution'" - and given, on the other hand, the fact that the Committee on the Elimination of Racial Discrimination, in its concluding observations on India's periodic reports, stated, "the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention on the Elimination of Racial Discrimination" (CERD/C/304/Add.13, para. 14), the Special Rapporteur believes that specific attention should be given to the situation of the untouchables in India; a field mission might be envisaged for that purpose, with the agreement of the Indian Government.

IV. REPLIES TO ALLEGATIONS TRANSMITTED TO GOVERNMENTS BY THE SPECIAL RAPPORTEUR

101. In 1998, the Special Rapporteur transmitted allegations of racism, racial discrimination and xenophobia to the following four Governments for comments: South Africa, Spain, United States of America and Indonesia. When replies are received within a reasonable period of time and the allegations found not to be justified, they are not published. Otherwise, the Special Rapporteur brings the situations reported to him to the Commission's attention.

A. South Africa: Communication of 17 September 1998

Case 1998/1: Allegation of xenophobia

102. It has been reported that on 3 September 1998, at 4.30 p.m., three foreigners, two from Senegal and one from Mozambique, were killed on a train near Irene station, outside Pretoria after a mob accused them of stealing jobs from South Africans. According to a police spokesman, two of the victims were electrocuted by overhead wires when they tried to escape the mob by climbing onto the train roof. A third man fell or was thrown out of the window and was run over by an oncoming train.

103. Allegedly no witnesses to the three deaths have come forward, and no arrests were made. Two placards were found near the train after the incident. They said: "Down with foreigners, they are taking our jobs" and "We will take the law into our hands".

104. It has also been reported that a number of people who were on the train had participated in a protest march to the offices of the Departments of

Labour and Home Affairs in Pretoria earlier in the day to demand job creation and banning of illegal aliens from the country because they were to blame for the high unemployment rate. The marchers were members of an organization called Unemployed Masses of South Africa.

Government reply

105. The Special Rapporteur has received no reply to date.

B. Spain

106. Several cases of police brutality and attacks by skinheads were communicated to the Special Rapporteur through the 1998 annual report of the organization SOS RACISMO. These incidents have been brought to the attention of the Spanish Government. The Special Rapporteur hopes to receive its comments, which will be analysed in his next report to the Commission on Human Rights.

C. United States of America: communications of 22 September 1998

Case 1998/1: Allegations of racism and racial discrimination in the United States Penitentiary at Lewisburg

107. It has been reported that on 25 October 1995, 13 inmates at the United States Penitentiary at Lewisburg, including a Mr. Patrick, were beaten without any reason. All the details about the aggression are written down in a copy of the lawsuit that was filed in the District Court for the Middle District of Pennsylvania, dated 17 November 1997. In that copy there is a description of each of the 13 cases of aggression including that against Mr. Patrick.

108. Mr. Patrick alleged that he was handcuffed and escorted down a corridor where he was sadistically hit on the back of his head, then pushed downstairs. He was then repeatedly punched on his face and body and subjected to racial slurs. He was ordered to keep his face down on the floor, which was covered in urine, faeces, blood and vomit, and was forced to stay in this position for many hours. He was then robbed of his wristwatch before being sent back to his cell. Mr. Patrick was then denied medical treatment despite his serious medical needs. He is currently incarcerated at the United States Penitentiary in Marion, Illinois.

Case 1998/2: Allegation of racism and racial discrimination in Green Haven Correctional Facility (Stormville, New York)

109. Mr. Amaker, who is currently detained in Green Haven Correctional Facility (Stormville, New York), alleged that he was beaten on 3 November 1995 in retaliation for writing complaints against the officials of the prison. He was beaten with batons and a flashlight.

110. After that day, Mr. Amaker asked for a medical examination, especially for an MRI X-ray, which he was denied for two years. When he eventually was examined, Dr. Lester Silver called him a liar for his complaints and covered up the assault, in violation of the Patients' Bill of Rights. The plaintiff

claims he has substantial physical damage to the head, back, arms, legs and face and that he also suffers from psychological damage: post-traumatic stress caused by repeated retaliation and intimidation tactics and flagrant attitudes of racial discrimination and by the imposition of five years' confinement in the Special Housing Unit. Mr. Amaker also claims that his religious beliefs (Mr. Amaker is a Muslim) were violated, as he was forced to have a T.B. injection containing human protein.

111. Mr. Amaker brought an official civil complaint before the United States District Court, Eastern District of New York, on 28 November 1996, but no sanction was taken against the prison officials.

Government reply

112. The Special Rapporteur has received no reply to date.

D. Indonesia: Joint communication of the Special Rapporteur on contemporary forms of racism and the Special Rapporteur on violence against women dated 23 July 1998

113. The communication reads as follows:

"Pursuant to our mandates, we would like to transmit to Your Excellency's Government information on alleged instances of violence against ethnic-Chinese Indonesians and, in particular, alleged violations of the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Elimination of Racial Discrimination.

"The communication which we have received allege that during the riots in May 1998 there was widespread and systematic rape of ethnic-Chinese women. It is reported that more than 400 girls and women, ranging in age from 10 to 55 years, were raped. The attacks ranged from women being made to strip and perform exercises in public to gang rape of women who were then thrown into burning buildings. It is alleged that some of the perpetrators specifically justified their actions by citing the Chinese origin of their victims.

"It was also reported to us that police and security forces may have been involved in these actions, due to the organized nature of the assaults and the physical appearance of the perpetrators.

"According to reports, human rights and women's aid groups have received telephone threats to stop their investigations and assistance to the rape victims. Witnesses and rape victims who have given evidence to the Indonesian Human Rights Commission have allegedly been threatened. It is reported that there have been efforts to silence, terrorize and even eliminate rape victims so that they cannot give their testimony."

Government reply of 7 August 1998

114. Prior to President Soeharto's resignation on 21 May 1998, which marked the end of 32 years of the "New Order" Government, several cases of human rights abuses shocked the Indonesian people and gave rise to strong concern within the international community. These included the massive burning and looting resulting from the May 1998 riots and the widespread violence and rapes essentially aimed at Indonesia's Chinese minority. However, the new Government is strongly committed to investigating these cases fully, for the sake of the victims and the whole nation, to address the root causes of this tragedy and to bring those responsible to justice.

115. The deplorable attacks on Indonesian citizens, most notably on the Chinese minority, during the May riots, in Jakarta as well as in other parts of Indonesia, have, according to human rights groups, resulted in the death of more than 1,000 persons, many of whom were non-Chinese Indonesians, and the rape of some 160 ethnic Chinese women.

116. In a public announcement on 8 July 1998, Mr. B.J. Habibie, the new Indonesian President, described the horrors that took place in May as the most inhuman episode in the history of the nation. The President, in sharing the grief and the distress of the victims, expressed, on behalf of the Government and the people of Indonesia, deep regret and strongly condemned the atrocities perpetrated during the May riots, including the violence against the Chinese community, in particular the rape of Chinese women.

117. Human rights groups, including the National Commission for Human Rights, known as Komnas HAM, suggested, on the basis of evidence gathered during the course of their investigation, that it was organized groups which instigated arson, vandalism and rapes, aimed largely at ethnic Chinese neighbourhoods.

118. In addition to the measures taken to investigate the cases of human rights violations, the Government has already taken steps to provide assistance to the victims and above all to prevent such incidents from happening again; these steps are described in the following paragraph.

119. On 12 June 1998, the Ministry for Women's Affairs established a forum called Kata Bunga in cooperation with the Indonesian psychiatrists' association, the Pusat Bantuan dan Konsultasi Hukum, an institution offering legal aid, a number of religious leaders (Islamic, Christian, Buddhist, Hindu) and Indonesian Chinese Groups (Persabi and Kong Hu Chu). The task of this forum is to collect relevant information, conduct studies and formulate recommendations to the Government in order for the latter to provide adequate assistance to the victims and to prevent the recurrence of these unfortunate incidents. In addition, it is aimed at providing medical, psychological and legal assistance as well as spiritual counselling to the victims.

120. On 8 July 1998, the Government, accepting its full responsibility to ensure the physical and psychological integrity of the victims of rape, formed a task force for the protection of women against violence. This task force, whose task is to follow up the recommendations of the Kata Bunga forum, is headed by the Minister for Women's Affairs as Chairman, the Minister for Social Affairs as her deputy and the First Lady, Dr. Hasri Ainum Habibie as

adviser. Its main purpose is to provide the victims and their families with post-traumatic care; its programme includes psychological and medical help as well as spiritual counselling given by volunteers such as doctors, psychologists, gynaecologists, psychiatrists, lawyers and religious leaders, in cooperation with crisis centres for women. In the medium term, its programme includes:

(a) Expediting the ratification of international instruments dealing with the prevention of violence, rape and discrimination against women;

(b) Reviewing all national laws and regulations in order to eliminate discrimination against women;

(c) Conducting comprehensive studies on the root causes of rape and other violence against women;

(d) Disseminating information on the rights of women, including their right to protection against violence;

(e) Strengthening the capacity of public crisis centres for women;

(f) Promoting cross-sectoral coordination between the Government and the community at large for the prevention of violence against women, including rape.

121. On 15 July 1998, the National Committee for the Prevention of Violence Against Women, chaired by Prof. Saparinah Sadli, was created with a view to implementing the National Programme on the Elimination of Violence against Women. This programme, under the direct responsibility of the President, will operate in cooperation with the National Committee on Human Rights, the implementing body of the National Plan of Action on Human Rights.

122. A Government fact-finding team was established, chaired by the Minister of Justice, consisting of the Chiefs of the Armed Forces, the Chief of the Prosecutor General's Office, the Chief of Police, the Minister of Health and the Minister for Women's Affairs.

123. On 23 July 1998, another independent fact-finding team was formed following a joint decision by the Minister of Justice, the Chief of the Armed Forces, the Minister of Home Affairs, the Chief of the Prosecutor General's Office, the Minister for Women's Affairs and the Minister for Foreign Affairs to shed light on the aforementioned incidents which occurred from 12 to 15 May 1998, including the shooting of four students in Jakarta on 12 May 1998. One of the responsibilities of the team will be to seek out of those responsible for planning and carrying out some of the criminal acts in the May riots, more particularly the institution(s) responsible for the occurrences rather than the individual perpetrators themselves, who would be practically impossible to identify. The work of this independent team is being conducted in parallel with the investigations being carried out by the military and other State institutions. The team has been given three months to complete its investigation and is expected to produce its report by the

beginning of November 1998. The report is expected to contain some recommendations for the Government which the latter is fully committed to implementing.

124. President Habibie has pledged to institute better protection of Sino-Indonesians, their life and property. In this regard, the Government has begun reviewing the legislation to ensure that all citizens are treated equally before the law as enshrined in the 1945 Constitution, and that no government regulation is discriminatory against any racial group. The Indonesian Government has now abolished the use of identifying codes on Indonesian Chinese identity cards. More importantly, it has made preparations for the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination before the end of 1998.

125. Although the May riots appeared to be characterized by a phenomenon of racial discrimination and religious intolerance, which targeted mostly non-Muslim Indonesian ethnic Chinese, the long-established Indonesian tradition of mutual respect and dialogue among diverse religious believers, without racial distinction, remains unchanged. The informal consultation mechanism established between the various communities and religious leaders, such as that sponsored by Abdurrohman Wahid of the Islamic organization "Nahdlatul Ulama" and leaders of other religions, has intensified in an effort to help solve the current social problems faced by the Indonesian people. An inter-religious foundation, Yayasan Panca Dian Kasih, was recently established by several prominent Islamic, Christian, Buddhist and Hindu personalities to strengthen religious tolerance at the grass-roots level. It is also worth noting that on 1 August 1998, thousands of Muslims, Christians, Buddhists, Hindus, Kong Hu Chu believers, Baha'is and believers of other religious denominations, gathered together to pray in Banteng Square in Jakarta in solidarity at the human tragedy in recent months throughout the country: this joint prayer reflects the longstanding tradition of co-existence between people of different religions and ethnic origins.

126. In keeping with its spirit of cooperation and openness, the Government of Indonesia has promised to keep the Special Rapporteur informed of future developments in this matter. The Special Rapporteur has already received some excerpts from the report of the Joint Fact-Finding Team on the May 1998 Riots, which are available for consultation at the Office of the High Commissioner for Human Rights.

V. FOLLOW-UP TO FIELD VISITS: LEGISLATIVE AND JUDICIAL MEASURES TAKEN OR ENVISAGED BY GOVERNMENTS

A. Germany

127. A general bill on racial discrimination was submitted to the Bundestag, which apparently did not adopt it. The Special Rapporteur would like to learn more about this initiative and he hopes that the Government of Germany will continue its efforts to strengthen its legislation against racial discrimination.

B. Brazil

128. A Protocol of Cooperation has been concluded between the Ministry of Justice and the Ministry of Labour to promote racial and ethnic equality in employment. It reflects intensive studies made by and discussions within the Executive Working Group for the Elimination of Discrimination on Employment and Occupation and the Interministerial Working Group for the advancement of the Black community. The Protocol is motivated, inter alia, by the great percentage of Blacks in the Brazilian population, the commitments assumed by the Government in the framework of the International Labour Organization's Convention No. 111, the need to underscore the role of the Black population in building a democratic and responsible citizenship and the goal of fostering the importance of education as a way of consolidating the idea of equality.

129. The Brazilian Government remains concerned at the difficulties faced by Blacks with regard to existing economic opportunities in society, especially the question of income. The principal objective of the Protocol is thus to expand programmes designed to broaden the access of Blacks to professional qualification, income-oriented activities and market labour. The Protocol is aimed at establishing an adequate basis for guaranteeing equal opportunity and treatment, the appropriate way of recognizing the dignity, equality and full citizenship of the country's Black community. Among the actions foreseen by the Protocol, mention should be made of the exchange of information, documents and technical and institutional support; coordination in the planning, implementation, follow-up and evaluation of programmes and promotion of conceptual and methodological progress on race and colour issues, with a special focus on groups at risk or in a disadvantaged situation.

130. The National Secretary of Human Rights should act as an element for mobilization of the State and Municipal Councils on Human Rights and on Black Population Rights, with the objective of cooperating in the formulation and implementation of projects. The Secretary for Employment and Salary Policies of the Ministry of Labour will be responsible for conducting studies, implementing policies for vocational training and generating jobs and income from the colour/race perspective, with a view to raising the participation of Blacks to new levels at least proportional to their contribution within the economic active population.

131. The Special Rapporteur welcomes the measures taken, which are in keeping with his recommendations. He would like to receive information on the measures taken or envisaged on behalf of the Amerindians whom he met during his mission.

C. United States of America

132. In June 1997, President Clinton launched his "President's Initiative on Race: One America in the 21st Century". In September 1998, the Government of the United States issued two reports, one by the President's Advisory Board on Race, "One America in the 21st century: Forging a new future", and the other by the President's Council of Economic Advisors, "Changing America: indicators of social and economic well-being by race and Hispanic origin".

Both of these reports marked the end of President Clinton's "Initiative on Race" and provide a social, political, demographic, and economic assessment of the situation of race relations in the United States.

133. The Advisory Board on Race report called for "a substantial increase in the civil rights enforcement budget" because "discrimination on the basis of race, colour and ethnicity continues to be a fact of life in America and the budgets of federal civil rights enforcement agencies have not kept pace with their increasing responsibility". It also called for more focus on early childhood learning and skills training to help overcome income inequality, efforts to promote respect for ethnic diversity and creation of a permanent public forum to continue the work of the President's race initiative.

134. The report produced by the President's Council of Economic Advisers, provides a thorough statistical analysis of racial issues in the United States, and includes Hispanics, Whites, Blacks, Asians, and American Indians in its groups for comparative analysis. Some of its findings were:

> "Race and ethnicity continue to be salient predictors of well-being in American society. On average, non-Hispanic Whites and Asians experience advantages in health, education and economic status relative to Blacks, Hispanics and American Indians".
>
> "Over the second half of the 20th century, Black Americans have made substantial progress relative to Whites in many areas. But this progress generally slowed, or even reversed between the mid-1970s and the early 1990s. In many cases, large disparities persist."
>
> "The relative economic status of Hispanics has generally declined over the past 25 years. However, the Hispanic population has grown rapidly, more than doubling in size between 1980 and 1997, in large part because of immigration. Thus, in interpreting trends in the relative well-being of Hispanics, it is important to keep in mind that the increasing representation of Hispanic immigrants with lower average levels of education and income has contributed to the decline in average Hispanic social and economic well-being."
>
> "American Indians are among the most disadvantaged Americans according to many available indicators, such as poverty rate and median income, although comparable data for this group are sparse due to their small representation in the population." 7/

135. By and large, this report indicates that Whites and Asians are able to achieve near-parity with regard to economic and educational status, whereas Hispanic and Black populations are comparable in several areas, but significantly behind Whites and Asians economically, professionally, and educationally. In addition, these populations, especially Blacks, are much more likely to be targeted by police and convicted of crimes. Although Blacks currently make up only 13 per cent of the population of the United States, they account for 43 per cent of arrests, 54 per cent of convictions, and 59 per cent of prison admissions. 8/ Educationally and economically, it is clear that American Indians are still the most marginalized group in the United States, however, it is encouraging that many more American Indians are

feeling comfortable enough to self-report their identity as such. In concluding, this report also asserts that White Americans remain ignorant to the fact that race causes true disadvantages in United States society for minorities, and that this is an issue that will need to be addressed in the coming years for the United States to achieve harmonious diversification.

136. The Special Rapporteur found this report to be very informative and useful, and was pleased to find that the statistics appeared to present a frank view of the status of different races in the United States. However, it is extremely dismaying that these two reports, clearly devoted to the issues of racial relations and racism, were not sent by the Government of the United States directly to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Additionally disappointing is the fact that these two reports, whose stated purpose was to educate the United States public on race and diversity issues, received such little publicity or press coverage. It would be encouraging to see a real effort on the part of the Government to get this information to the people whom it was supposedly targeting in the drafting of these reports. It would also be helpful in future studies if Arab-Americans were included as an ethnic/racial group, since they currently appear to be the subjects of much hostility and marginalization in United States society.

137. Additional information received by the Special Rapporteur gives an overview of the situation of peoples of colour in the United States of America with regard to health, education, employment, poverty, police brutality and racist hate group activities. They are available for consultation in the Office of the High Commissioner for Human Rights. 9/

D. France

138. The Government of France has pledged to implement the recommendations concerning France made by the Special Rapporteur in his mission report. Several measures currently being implemented are contained in the annual report of the French National Human Rights Advisory Commission. There have been several judicial decisions regarding incitement to discrimination or racial violence, the desecration of the Jewish cemetery at Carpentras, challenges regarding crimes against humanity and racial slurs. Measures to combat discrimination in employment have been taken on behalf of young immigrants. Campaigns have been launched to bring these young people into contact with "sponsors" - volunteers known and trusted by employers. The sponsor system consists of "providing contacts for people who have none", enabling them to have access to employment and supporting them in the workplace by providing for mediation between young people, their workplace and their daily living environment (transport, health, housing, recreation, etc.). 10/

139. The Government has also prepared the following proposals in the context of the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance:

(a) It suggests that the United Nations High Commissioner for Human Rights should establish a mechanism for coordinating the activities of the Third Decade to Combat Racism and Racial Discrimination;

(b) It draws attention to the urgent need for concerted international action to combat racist propaganda and racial hatred disseminated over the Internet;

(c) It states that it is prepared to take part in the organization of a European regional meeting in preparation for the World Conference and to make recommendations.

E. United Kingdom of Great Britain and Northern Ireland

140. The legislation against racial discrimination was extended to Northern Ireland by the proclamation of Race Relations (Northern Ireland) Order 1997; racial discrimination in employment, training, education, housing and provision of goods and services is now prohibited in Northern Ireland.

141. Continuing efforts are being made to recruit Blacks and Asians into the police, following allegations of institutional racism in the London and Manchester police forces. 11/ The Special Rapporteur hopes to receive more information from the British Government on the results of several initiatives taken by the Home Secretary in this connection.

VI. CONCLUSIONS AND RECOMMENDATIONS

142. The Special Rapporteur welcomes the effective measures taken by the Governments which replied to his request. He encourages them to complete the work they have begun. He hopes that Governments which have not yet done so will send him their comments to enable him to assess the extent to which his mandate has been fulfilled, in anticipation of the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance.

143. The Special Rapporteur is somewhat concerned, but not discouraged, to note the persistence in several regions of the world of subtle or violent forms of racial discrimination, xenophobia and intolerance. He deeply regrets the rise in neo-fascism and neo-Nazism, the continuing use of Internet for spreading racist ideologies, the rise in ethnonationalism, the continuing discrimination against the Gypsies or travellers and the manifestations of anti-Semitism.

144. For this reason, in view of the forthcoming World Conference on Racism, to be held in 2001, he recommends that the Office of the High Commissioner establish flexible and functional bodies and mechanisms in order to ensure the conference is prepared for in a methodical and scientific manner:

(a) By organizing regional meetings of experts to assess work on the question by reviewing the studies made (the reports of the Special Rapporteur and the Committee on the Elimination of Racial Discrimination will be of use in this context) and undertaking new ones on specific topics and contemporary situations;

(b) By involving the United Nations specialized agencies and the regional, subregional and non-governmental organizations in the preparatory process;

(c) By establishing, within the Office of the High Commissioner and under the High Commissioner's authority, an observatory on neo-fascism, neo-Nazism and ethnonationalism, in close cooperation with the Special Rapporteur.

Notes

1/ Transcript of the press conference of the Prime Minister of Australia, the Hon. John Howard MP, Prime Minister's Courtyard, Parliament House, 14 October 1998.

2/ Eduardo Damaso, "L'extrême-droite au Portugal" in Extrémisme en Europe, Paris, Centre européeen de recherche et d'action sur le racisme et l'antisémitisme, 1997, pp. 280-285.

3/ Anti-Semitism Worldwide: 1997/98.

4/ Thiagara, Henry. The Indian Socio-Economic Pyramid, Dalit Liberation Education Trust.

5/ Varhade, Yogesh. Statement made to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Working Group on Indigenous Populations, fifteenth session, 28 July-1 August 1997, Ambedkar Center for Justice and Peace.

6/ Dalit Liberation Education Trust. Statement to the Working Group on Minorities of the Commission on Human Rights, 26-30 May 1997.

7/ The Council of Economic Advisers for the Initiative, "Changing America: indicators of social and economic well-being by race and Hispanic origin," September 1998, p. 2.

8/ "Changing America, ...", p. 51.

9/ "Update on situation in United States of America", Communication dated 30 November from December 12 Movement/International Association against Torture; Human Rights Watch, Report 1999, pp. 385-394.

10/ Commission nationale consultative des droits de l'homme, 1997. La lutte contre le racisme et la xénophobie. Exclusion et droits de l'homme, Paris, La Documentation française, 1998, p. 101.

11/ "Manchester police chief admits his force is racist", Guardian Weekly, 25 October 1998, p. 8.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Report by Mr. Glele-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26

Addendum

Mission to South Africa (24 February - 5 March 1998)

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Introduction

1. In pursuance of the mandate conferred on him by Commission on Human Rights resolutions 1993/20 and 1996/21, the Special Rapporteur carried out a mission to South Africa from 24 February to 5 March 1998 in response to allegations concerning a rise in xenophobia and mistreatment of migrants in that country 1/. He also used his stay to examine the progress of the post-apartheid reforms and the obstacles confronting the rapid transformation of South African society into one that is democratic and non racist.

2. The Special Rapporteur visited Pretoria, Cape Town, Johannesburg and Durban where he met representatives of government, the Constitutional Court, the Human Rights Commission, municipal councils, academic institutions and various non-governmental organizations. Among those he consulted were Mr Dullah Omar, Minister of Justice, Ms Manto Tshabalala-Msimang, Deputy Minister of Justice, Mr F. S Mufamadi, Minister of Safety and Security, Mr Abdul S. Minty, Deputy Director General for Multilateral Affairs at the Department of Foreign Affairs, and Mr. A. Chaskalson, President of the Constitutional Court. The Special Rapporteur also had a working meeting with representatives of various UN organizations based in Pretoria (UNHCR, UNDP, IMO, UNIC). A complete list of those consulted by the Special Rapporteur is in the detailed mission programme attached to this report.

I. THE SOCIO-ECONOMIC AND POLITICAL SITUATION IN SOUTH AFRICA

A. Historical survey

3. After more than forty-five years of apartheid, in 1994 the oppressed peoples of South Africa achieved internal sovereignty. As an aid to clearer understanding of the scale of the reforms being tackled by the government and the problems confronting it, there follows a brief reminder of the nature of the racist and discriminatory apartheid regime and its effects on South African society.

4. Apartheid was introduced in 1948 by the National Party as a system of racial segregation designed to maintain a situation of inequality between the Whites and the other ethnic and racial groups living in South Africa, in the economic, social, political and cultural spheres. A battery of laws was adopted in order to separate these groups from each other and to establish a structure enabling economic and human resources to be exploited to the advantage of the Whites :

1/ A/51/301, para. 36; Hennie Kotze and Lloyd Hill, "Emergent Migration Policy in a Democratic South Africa", International Migration, Quarterly Review, Vol. 35, No 1, 1997, pp 5-36; Human Rights Watch/Africa, "The Human Rights of Undocumented Migrants, Asylum Seekers and Refugees in South Africa", submission to the Green Paper Task Group, 11 April 1997 (www.polity.org.za:80/govdocs); Steven Friedman, "Migration Policy, Human Rights and the Constitution", Centre for Policy Studies (www.polity.org.za:80/govdocs).

a) The *Population Registration Act 1950* categorized people at birth into one of four official racial groups (White, Coloured, Indian, African);

b) The *Group Areas Act 1950* imposed separate residential environments for each group. In addition, under the *Black (Urban Areas) Consolidation Act 1945*, Blacks were forbidden to stay beyond a certain time in White-occupied areas and were required to carry a document (Pass) at all times stating their places of residence and work. Since 1913 Blacks had already been confined to 7.3% of South African territory by the *Native Land Act 1913*;

c) The *Prohibition of Mixed Marriage Act 1949* and the *Immorality Amendment Act 1950* forbade interracial marriages and sexual relations between persons of different race;

5. The system was sustained through oppression and the constant use of violence against Blacks, who suffered the greatest discrimination although they comprised the largest group (over 70 % of the population). The Blacks were relegated to the outskirts of towns, in *townships* and in *bantoustans* 2/, where they lived in makeshift constructions without running water, electricity and basic sanitation. They were reduced to a cheap labour force, working as domestic servants, in mining and in agriculture. They received a rudimentary and poor quality education. A study published in 1987 estimated that public spending for each black child was less than a sixth of that for a white child 3/.

6. The new South African authorities thus inherited a country characterised by economic, social, political and cultural imbalance, and by a culture of violence stemming from its past. The partitioning of the territory and of human relations also left the country with the closed mentalities which the government is now trying to change.

B. Socio-political survey

7. The new South Africa has arisen after a long struggle by its oppressed peoples, beginning in 1912 with the birth of the African National Congress (ANC) and ending, with active assistance from the United Nations and the OAU, in negotiations with the White authorities that started in 1993 in the context of the Convention for a Democratic South Africa (CODESA). In 1994, a provisional constitution establishing a democratic and non-racist South Africa was adopted and multiparty elections were held.

8. Those elections brought to power the African National Congress (252 of the 400 parliamentary seats), whose political programme underpins the changes that are taking place. The ANC holds power in seven out of the nine provinces (Eastern Cape, Free State, Gauteng, Mpumalanga, North West, Northern Cape,

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2/ Supposedly autonomous territories that were in fact reserves to which a dozen or so ethnic African groups were banished, from 1951, in order to keep them away from urban centres inhabited by Whites.

3/ South African Institute of Race Relations, Social and Economic Update, 8 November 1987.

Northern Province). The National Party, which founded and implemented apartheid, won the elections in Western Cape, and the Inkhata Freedom Party those in Kwazulu Natal.

9. The permanent Constitution signed by President Mandela in 1996 established a unitary State divided into nine provinces (Eastern Cape, Free State, Gauteng, Kwazulu Natal, Mpumalanga, Northern Cape, Northern Province and Western Cape), each having a Provincial Assembly and an Executive Council headed by a Premier. The President of the Republic, the supreme State authority, is elected by Parliament.

10. Today the population is divided into Blacks and Whites; this is a political rather than racial distinction, the term "Black" covering those populations previously subjugated, namely the Africans (70% of a population estimated to be 40 million by the 1997 census), Indians and Coloureds, although not all the members of the last two groups accept this classification.

C. Human rights survey

11. Chapter 2 of the 1996 Constitution comprises a bill of rights which guarantees all people universally recognized fundamental rights and freedoms, including the rights to equality, life, freedom of religion, belief and opinion, freedom of expression and freedom of association. The Constitution also guarantees most economic, social and cultural rights, including the rights to property, housing, health and education, and the right to use the language and participate in the cultural life of their choice. A Human Rights Commission has been set up by constitutional law in order to promote human rights and to supervise implementation of the bill. *(Human Rights Commission Act No. 54 of 1994)*

12. Three other institutions protect human rights in particular fields, namely the *Public Protector*, the *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*, and the *Commission on Gender Equality*. The latter plays an active role in tackling domestic violence.

13. The Public Protector, a type of mediator who replaced the Ombudsman in October 1995, is represented in the nine provinces. He intervenes in cases of infringement of public employees' rights or of corruption in public administration. With a staff of 27, he is based in Pretoria, but conducts investigations in the field with police assistance. He submits his recommendations to the sphere of government concerned, which generally follows them. Any person may refer a matter to the Public Protector, who will initiate an investigation if he finds the complaint justified. The Public Protector also works closely with the *Independent Complaints Directorate*, which passes on to him complaints received against the police.

14. The Special Rapporteur had a working meeting with the Chairman of the National Coalition for Gay and Lesbian Equality, who informed him of the problems and sexually discriminatory practices encountered by his members (at school, at work, refusal of medical attention), whether South Africans or immigrants from Namibia, Zimbabwe, Botswana and Zaire. Those with whom the Special Rapporteur spoke informed him that negotiations were now under way with Parliament and the Government aimed at repealing the anti-homosexual legislation

dating from the apartheid era; they welcome the legal verdicts which have already been made in support of the equality of men and women, and the sympathetic hearing they are receiving from Christian churches. They deplore the discrimination being suffered by Blacks within the Coalition and say they are determined to work towards equality between Blacks and Whites in the Coalition.

15. Since its return to the community of nations, South Africa has begun the process of ratifying international and regional instruments on the protection of human rights. The government has submitted the international conventions on human rights to Parliament for ratification; the legislation to implement them is in preparation. In collaboration with the Ministry of Education, provision is being made to introduce human rights programmes to the school and university curricula.

II. IMPLEMENTATION OF POST-APARTHEID REFORMS

16. Since the 1994 elections, sweeping political changes have occurred. This is not the case in other sectors such as the economy, education and social affairs. The general election was only the starting point, according to the Minister of Justice. South African society is still riddled with racial divisions. Some people are still excluded, which explains the need to effect economic, social and cultural changes. Radical reforms are taking place in political institutions, the army, the police and the judiciary.

A. The reforms

1. Fostering unity and reconciliation

17. The first task of the democratically elected Government was to foster unity and reconciliation among all sections of the South African population. Hence the establishment of the Truth and Reconciliation Commission: it has no legal function, but its main purpose is to reveal the causes, nature and extent of the human rights violations committed under apartheid. It also has the task of establishing the fate of the victims and survivors of human rights abuses, rehabilitating them or restoring their dignity, and compensating them. Lastly, the Commission can grant amnesty to perpetrators of human rights violations who agree to give evidence before it.

18. The Commission has devised a rehabilitation and compensation programme for the victims and survivors of the wide-ranging human rights abuses committed between 1960 and 1994. The five-part scheme has been submitted to the government and to Parliament for discussion and approval 4/ :

(a) Individual reparation grants, which will be part of an individual financial grant scheme;

(b) Symbolic reparation, which will help communities to commemorate together "the pain and victories of the past";

4/ See Truth Talk, The Official Newsletter of the Truth and Reconciliation Commission, Vol. 3, No. 1, November 1997.

(c) Community rehabilitation programmes;

(d) Institutional reform, designed to prevent human rights abuses from happening again; and

(e) Urgent interim reparations.

19. The Truth and Reconciliation proposals were developed around several principles, which were that reparations should be development-centred, simple and efficient, appropriate in cultural terms, community based, and must promote healing and reconciliation as well as capacity-building in communities.

20. Individual reparation will take the form of a scheme under which each victim of a gross human rights violation will receive an individual annual financial grant for a period of six years. Most of the value of the grant would acknowledge the suffering caused by the gross violation of human rights experienced by a victim.

21. Symbolic reparation conjures up images of monuments, but could take the form of a variety of other measures. It may include the erection of memorials and monuments on both national and local levels, as well as the identification of a "Day of Remembrance". On a more individual level, symbolic reparation could also mean assistance to individuals in obtaining death certificates and finalizing outstanding legal matters, or clearing their names from criminal records. Victims may be eligible to have relatives exhumed or buried, or in some cases to receive a headstone or tombstone.

22. The Commission has further recommended that streets and community facilities should be renamed to reflect and honour individuals or events in communities. It identified a need for culturally appropriate ceremonies. Community rehabilitation programmes hinge on the main policy principle that reparation should be development centred, to empower individuals and communities to take control of their own lives. It therefore implies the provision of sufficient knowledge and information about available resources to victims through a participatory process. Among the categories of community rehabilitation recommended are health care, mental health care, education and housing. A programme to demilitarise the youth who have come to accept violence as a way of resolving conflict is included under emotional health care, as is a multi-disciplinary programme involving all ministries and departments to resettle the thousands of "internal" refugees driven from their homes due to political conflict.

23. Institutional reform overlaps with the broader aims of the Commission, including measures designed to prevent the recurrence of human rights abuses, for implementation in a wide range of sectors such as the judiciary, media, security forces and business; this reform should contribute to the development of a human rights culture in South Africa. The urgent interim reparation component of the Commission's reparation and rehabilitation programme is aimed at providing limited financial resources to people in urgent need to enable them to access appropriate services and facilities.

24. The Commission has received around 15 000 statements from victims of human rights abuses or their parents, and 7 000 applications for amnesty. It has heard

over 1 000 people implicated in cases of large-scale human rights abuse, ranging from maltreatment to murder, and including torture and abduction. Although some people are inclined to denigrate the Commission and to describe it as a "circus" 5/, this *ad hoc* institution plays a vital conciliating role, defusing resentments and making a clean break with the past so that fraternal relations can be established between the different elements of South African society.

25. A further aspect of the policy of unity and reconciliation has been to entrust the media with the task of broadcasting a message of unity and conciliation. Thus, the South African Broadcasting Corporation has produced a slogan which is also a leitmotif :"Simunye-We are One". All the races living in South Africa now appear on its television screens, reflecting the concept of *"Rainbow Nation"* created by Archbishop Desmond Tutu.

26. The effects of the policy of unity and reconciliation on South African society have been mixed. The Commission has not received cooperation from the Inkatha Freedom Party which accuses it of conducting a "witch-hunt" among its members. None of this party's leaders has requested amnesty for his actions, despite its involvement in political violence and the assassination of anti-apartheid militants. Likewise, the National Party ceased cooperating with the Commission after former President of the Republic F.W. de Klerk was severely criticised for refusing to accept his party's responsibility for the human rights abuses which occurred during the apartheid era. This party has refused to give evidence about the system of repression (the *National Security Management System*) established secretly during the early years of apartheid to smash the ANC and the opponents of apartheid. Moreover, the white judiciary and businessmen on whom apartheid depended for its continued existence have also refused to collaborate with the Truth and Reconciliation Commission.

27. Nevertheless, the Commission - which has completed its work and submitted its report on 29 October 1998 - has partly satisfied South Africans' desire for the truth and their resolve to understand apartheid from inside, just as it has also come up to expectations regarding the nature of the offensive waged by the anti-apartheid forces and the errors they committed. During its sessions, the interaction between victims and perpetrators of human rights abuses, although painful, helped to calm heads and to dispel the perception that the perpetrators were exempt from punishment, through a process of catharsis. This exchange, without justifying their actions, humanised some of those who committed human rights abuses, giving them the opportunity to appear as hostages of a system they could not control and to obtain the direct forgiveness of survivors, victims and parents of victims. Thus, South Africans learned from the lips of Dr Daan Goosen, the leader of the project, that the former Government had initiated a scientific research programme aimed at developing a bacterium that would kill only Blacks or make them sterile. Furthermore, the dignity of victims has been restored and the compensation they will receive, even if it cannot make up for the disappearance of a loved one and the after-effects of maltreatment,

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5/ The former President of the Republic, Pieter Botha, invited to testify to the Commission, treated it as a "circus" and refused to appear before it. The Commission then lodged a complaint against Mr. Botha for contempt of court.

may appease the frustrations caused by the amnesties granted to the perpetrators.

28. The Commission has tried to make clear that the fostering of unity and reconciliation is a collective undertaking which must be tackled by all South Africans regardless of any distinction, thus enabling South Africa to proceed slowly towards a common destiny enabling it to escape from the demons of the past.

2. Reconstruction and Development Programme

29. The reconstruction and development programme is the instrument for the transformation of South African society. A governmental programme devised by the ANC and its partners, its objective is to reform economic and social conditions for the majority of South Africans left wanting by the apartheid regime. It will attempt to eliminate from all sectors of the economy and society (employment, industry, agriculture, culture, health, security) the divisions and disparities bequeathed by apartheid.

30. The Programme is structured around five main sub-programmes : meeting basic needs; human resources development, construction of the economy, democratisation of the State and society, and implementation of the actual reconstruction programme.

31. The interest of the Programme for this study is that it focuses on the implementation of economic, social and cultural rights as well as on civil and political rights. In that regard, the government considers that its first priority is "to begin to meet the basic needs of people, i.e. to provide them with jobs, land, housing, water, electricity, telecommunications, transport, a clean and healthy environment, nutrition, health care and social welfare. This includes programmes to redistribute a substantial amount of land to landless people, build over one million houses, provide clean water and sanitation to all, electrify 2.5 million new homes and provide access for all to affordable health care and telecommunications."

32. The development of human resources "deals with education from primary to tertiary level, from child care to advanced scientific and technological training. It focuses on young children, students and adults. It deals with training in formal institutions and at the workplace."

33. Concerning civil and political rights, the government believes that implementation of the programme must involve all levels of South African society. This aspect of the reforms determines a new role "under the Constitution and Bill of Rights for national, provincial and local government, the administration of justice, the public sector, parastatals, the police and security forces, social movements and NGOs." It sets up a democratic information system aimed at promoting socio-economic development. The active role being played by civil society in the establishment of democracy in South Africa is discussed below.

34. The Special Rapporteur was able to see for himself how the programme is being implemented in education, at municipal level, in the army, in the police and in the legal system :

Education

35. A school programme known as Curriculum 2000 will shortly be introduced with a view to purging teaching material of the falsehoods proclaimed by apartheid. Multilingualism will be encouraged through the eleven official national languages (Afrikaans, English, isiNdebele, Sepedi, siSwati, Sesotho, Setswana, Tshivenda, Xitsonga, isiXhosa and isiZulu), which will be taught on equal terms.

Municipal councils

36. These bodies are increasingly coming to reflect the racial and ethnic composition of the country. Several municipal councils, the exception being Cape Town, are controlled by a black majority which collaborates with municipal councillors from White-dominated parties such as the National Party. In Pretoria's municipal council, Blacks and Whites from the ANC demonstrate through their work to integrate the various communities their desire to overcome racial barriers. Development programmes for the surrounding townships have already been formulated. Through the cooperation which has been established between Whites and Blacks, Pretoria is seeking to become a showcase for the new South Africa.

The Army

37. Renamed the South African National Defence Force (SANDF) in place of the *South African Defense Force*, the army previously dedicated to destabilizing South Africa's neighbouring States and to launching attacks against the freedom fighters of the ANC, the PAC and other parties is now attempting to integrate the various armed groups which fought against apartheid into a single transracial body. The government's objective is to destroy the army's symbolic identity as an essential pillar of apartheid and turn it into a melting pot of national unity and a law-abiding democratic institution. A white paper entitled *Defence in Democracy: White Paper on National Defence for the RSA* spells out the army's new role. It will apply within its ranks the Government's policy of *equal opportunity* and *positive action* which calls for non-discrimination with regard to racial origin, sexual or religious persuasion, or for other reasons. A civic training programme, centred mainly on essential aspects of democracy, the South African Constitution, the Human Rights Charter, international humanitarian law, cultural diversity and military ethics, has been published in a manual entitled *South African National Defense Force Civic Education Guidelines* and is being implemented. It is complemented by a military training programme intended to provide, *inter alia*, the opportunity for the most deserving soldiers from the freedom movements to gain promotion. Currently, the 105 040 soldiers who make up 80.50 % of the South African army are distributed as shown in the table below, which was provided for the Special Rapporteur by the South African military authorities.

Distribution per race/gender
(15 February 1998)

	Male	%	Female	%	Total
Whites	27,989	21.45%	13,884	10.64%	32.09%
Indians/Asians	3,563	2.73%	869	0.67%	3.40%
Coloureds	8,383	6.42%	1,955	1.50%	7.92%
Africans/Blacks	65,105	49.89%	8,741	6.70%	56.59%
Total	105,040	80.50%	25,449	19.50%	100.00%

Distribution of commissioned officers per race/gender for the total of the South African Professional Soldiers
(15 February 1998)

	Male	%	Female	%	Total
Whites	6,880	5.27%	1,538	1.18%	6.45%
Indians/Asians	742	0.57%	127	0.10%	0.67%
Coloureds	463	0.35%	63	0.05%	0.40%
Africans/Blacks	2,486	1.91%	265	0.20%	2.11%
Total	10,571	8.10%	1,993	1.53%	9.63%

The efforts to improve the cultural and racial balance among army officers are the responsibility of Major General Sedibe, a black woman from the ANC. Recently, a Black was appointed as the army's Chief of Staff.

The Police

38. Those interviewed by the Special Rapporteur acknowledge that the police sometimes resort to violence and brutality, especially towards Blacks. In order to put a stop to this kind of behaviour, the *Community of Police policy*, a police department with a community support role has been set up. There is also an *Independent Complaints Directorate* to which complaints about police behaviour can be addressed. A programme of police reform has been devised and implemented in collaboration with Belgium. As with the army, a scheme based on equal opportunity and positive action is being implemented with a view to achieving a hierarchical structure representative of the South African population by the year 2000, with levels of 40 % and 10 % respectively for women and the disabled. One of the first steps was to end the system of separate toilets for black and white police officers. The use of racist terms such as "*kaffir*" has also been banned. Efforts are being made to raise black police officers' awareness of their rights, so that they do not behave like victims and learn instead how to react to persistent forms of racial discrimination. They also receive training aimed at ensuring that they do not end up confined to subordinate units while

their white colleagues staff the special units (scientific service, elite units…) and headquarters posts.

Justice

39. In order to protect the independence of the judiciary and the public's access to the judicial system, a Justice Commission has been established which will attempt to achieve a racial balance among magistrates. An educational programme has been developed at Pretoria Justice College with a view to reforming the judiciary's attitudes and thinking.

B. Opposition to the changes

40. The opposition takes the form of a veiled and persistent conspiracy: the efforts of the white minority to hold on to economic power and privileges, the sabotaging of governmental initiatives within the administrative system, negative propaganda in certain media regarding government activities, and attempts to depict the equal opportunity and affirmative action policies as racism and inverted racial discrimination.

41. At the 50th national conference of the African National Congress on 16 December 1997 at Mafikeng (Gauteng province), President Mandela strongly condemned a planned insurrection aimed at destabilising South Africa's young democracy. In his words, "various elements of the former ruling group have been working to establish a network which would launch or intensify a campaign of destabilisation, some of whose features would be: the weakening of the ANC and its allies; the use of crime to render the countryside ungovernable; the subversion of the economy; and the erosion of confidence both of our people and the rest of the world in our capacity both to govern and to achieve our goals of reconstruction and development."

42. The initiators of the planned insurrection were said to be already working actively in government and in other sectors of South African society. They had incited people to commit crimes and were attempting to weaken and paralyse the machinery of State through the theft of equipment weapons and ammunition; according to President Mandela, they had concealed documents of State importance and were in the process of setting up parallel structures, including an espionage system and armed forces. The most active tendencies in this movement were said to belong to neo-fascist groups with international contacts. Supporters of the former regime who oppose the measures being taken to redress past injustices argue that they constitute inverse racial discrimination which is incompatible with the Constitution; they protest that a brain drain is taking place and that an economic disaster will occur if the programmes of equal opportunity and affirmative action are implemented.

43. With competent officials in short supply, one of the major dilemmas facing the Government is that it must rely on an administration whose origins lie in the apartheid regime in order to implement a reform programme which that administration does not support. Some of those interviewed by the Special Rapporteur spoke of the recalcitrance of a part of the administration which still supports the beliefs of apartheid and hampers implementation of the reforms through delaying tactics.

44. The press remains largely in the hands of supporters of the former regime, with the exception of The Sowetan and Cape August, which are funded by Blacks and Coloureds. It is therefore inclined to criticize the government's actions rather than take an objective line. It often accuses members of the government and the ANC's provincial representatives of incompetence, nepotism and corruption.

45. Some previously White-dominated schools refuse to admit Blacks. One example is Vryburg school, about 200 km from Pretoria. Black children have been turned away when their parents wanted to enrol them "in case they lowered standards". Most of the parents association and the teachers are Whites, as is the chief of police, who makes little effort to apply the law.

46. In schools where instruction was given only in Afrikaans English and the African languages have been imposed by law owing to the refusal of Blacks to be taught in Afrikaans. However, Afrikaaners are reluctant to speak English or the African languages, with the result that two types of education can exist in the same building, one followed by Afrikaaners and the other by Blacks and the other racial groups. One tactic used by private Afrikaaner schools in order to exclude Blacks is to increase the fees considerably. Also, the argument of proximity to schools is used, whereby it is claimed that only those living within a certain radius relative to the school may be enrolled. Because of the policy of separating residential areas during the apartheid era, Blacks still live far away from the best schools located in the White suburbs. The Black population has expressed its outrage at this situation, and the government is trying to find a solution. True to the spirit of compromise which prevailed during the 1994 changeover, it refuses to use force and prefers to attempt dialogue with the community where problems arise.

III. THE RISE IN XENOPHOBIA

A. Migratory pressure on South Africa and the refugee influx

47. Since the 1994 elections, the issue of immigration has taken on alarming dimensions, the authorities having adopted a policy of criminalization and of systematically expelling "illegal" migrants or those without identity papers in response to growing xenophobia among the population. The most sought-after clandestine or illegal migrant is the "Nigerian", described as "French-speaking"; many Nigerians are accused of involvement in drug trafficking, organized crime and procuring.

48. The statistics on illegal immigration into South Africa are vague. Moderate sources speak of the presence of 500 000 clandestine foreigners, while the most alarmist put their number at 2 or even 11 million. The overestimation of the number of clandestine cases is probably due to the fact that migrants, who often trade in South Africa but do not wish to remain there permanently, are included in the figures. Another reason for the exaggerated numbers may be the tendency of some politicians to manipulate the statistics for electoral purposes, thereby playing on the fears of the population.

49. Most migrants enter the country for economic reasons. The majority of clandestine cases come from the 14 member states of the South African

Development Community (SADC) 6/. This may be explained by several factors: the long tradition (going back to the XIX century and strengthened during apartheid) of recruiting workers from Lesotho, Mozambique, Swaziland and Botswana for temporary work in the mines and in agriculture, particularly on farms in Mpumalanga and Northern Province. Many remain illegally in South Africa, either with the connivance of their employers or by extending their stay after their temporary work permit has expired. A second factor is the geographical proximity of the countries mentioned, which share borders with South Africa. Ultimately, the determining factor is probably the difficult economic situation in some neighbouring countries, particularly Mozambique.

50. South Africans represent one-third of the population of the SADC member states and have a gross domestic product three times greater than the combined gross national product of all the other Community states. For example, the ratio of per capita income in South Africa to that in Mozambique is 1 to 40. A further factor is that the establishment of democracy after the 1994 elections further enhanced the image of the new South Africa as a promised land in the minds of potential immigrants.

51. Beyond its sub-region, South Africa has recently recorded the arrival of migrants from central and western Africa (Nigerians and nationals of the Democratic Republic of Congo), and migrants from Eastern Europe (Bulgarians, Poles, Yugoslavs) and Asia (Chinese, Indians, Malays). South Africa is one of the favoured destinations for refugees from Angola, the Great Lakes region, the Democratic Republic of Congo, Somalia and Liberia.

52. Both the public and the administration are unable to distinguish between migrants, refugees, asylum seekers and students. No specific legislation exists on the right to asylum, even though South Africa has ratified the United Nations Convention relating to the Status of Refugees and that of the OAU. They are often likened to "economic refugees", and thus to migrants. Refugees therefore do not receive adequate protection and, just like migrants without papers, fall victim to xenophobic acts committed by the public; some have been attacked and killed.

53. Before the recent arrival of refugees, the South African Government had signed an agreement in 1993 with the United Nations High Commission for Refugees granting refugee status to 120 000 Mozambicans previously regarded as illegal migrants. However, the UNHCR's repatriation programme will return only 30 000 Mozambicans to their homes, the others preferring to remain in South Africa so as not to have to face the difficult economic and social situation in their country.

6/ Angola, Botswana, Congo (Dem. Rep.), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

B. Immigration control : rupture or continuity?

1. South African immigration policy

54. South Africa's immigration policy is geared to control and expulsion rather than to a regulation of the movement of people that takes account of its and its SADEC partners' socio-economic interests together with the geopolitical and economic realities dictated by its integration into the world economy. Its policy may be summarized thus: the Constitution gives South Africans the right to earn their living and access to health care, education, housing, etc; the presence on South African soil of foreigners with no legal status infringes (or limits) those rights. Immigration controls, by shielding South Africans from any competition for work and social services, thus protect their constitutional rights.

55. Two laws underpin current immigration policy:

(a) The *South African Citizenship Act* of 1995, which defines three categories for acquiring South African citizenship (birth, descent and naturalization);

(b) The *Aliens Control Act* of 1991: until 1986, under the apartheid regime racial origin governed the granting of citizen or permanent resident status in South Africa. Those accorded permanent residence or citizenship had to be "readily assimilable by the white inhabitants". In 1986, this racist clause was deleted by legislation. The *Aliens Control Act* distinguishes between three categories of foreigner : those in possession of legal entry documents, undocumented persons or illegal entrants, and refugees.

The 1991 law granted the administration extended powers in respect of the entry and exit of foreigners, without providing adequate legal guarantees; it was thus amended in 1995. There are some regrets that the Government did not overhaul the immigration legislation completely so as to take better account of the regional economic and social conditions which have given rise to the population movements.

56. Moreover, the amended law perpetuates the criminalization and excessive repression of illegal immigration. The *Aliens Control Amendment Act* of 1995 makes provision for general measures aimed at strengthening the capacity of the legal system and the Ministry of the Interior to tackle illegal immigration. One clause (Section 32 (e)) also gives the Ministry of the Interior the power to take steps to ensure that optimal use has been made of the local workforce before a work permit is granted. This clause clearly shows the government's commitment to a self-sufficient position that favours its own citizens exclusively, a stance which, according to some of those interviewed, contradicts the country's involvement in the development of the sub-region made up by the SADC States.

57. Nevertheless, two positive measures taken by the South African state must be recognized : the first, granted by President Mandela in 1995, concerns 50 000 illegal miners from two states that are highly dependent on South Africa: Lesotho and Mozambique. The second amnesty, decreed in 1996, concerns illegal persons from the SADC countries and Angola; those who entered South Africa

before 1 July 1991, have committed no crime, have a job (including those working for themselves) and are married to a South African citizen will receive their papers. Given the small number of people concerned (limited geographical area, numerous conditions, difficulty in proving that conditions have been met), this amnesty has had only limited effect to date 7/.

2. Immigration control

58. Illegal persons represent probably (though it is difficult to keep records) the majority of the immigrants in South Africa. Stigmatized in the *Aliens Control Act* as "prohibited persons" and criminalized by the law, they are regarded as undesirables, and therefore as liable to detention and repatriation. This process (arrest, detention, deportation) has frequently been denounced as being open to multiple abuse on the part of the South African authorities.

59. The introduction of stricter immigration legislation goes in tandem with the strengthening of police controls (the number of police units whose job is to search for illegal persons increased from 3 to 14 between 1994 and 1995). Raids have become much more frequent in the urban communities suspected of harbouring illegal foreigners. Some reports say that procedures are not being followed during arrests of suspected illegal foreigners. Others have described how the "immigrant hunts" provide some police officers with the opportunity to continue the violent behaviour and discriminatory practices made routine during apartheid. That violence is particularly evident during raids in which large numbers of more or less arbitrary and often violent arrests are made, often on the basis of "being the wrong sort" 8/, and the burden of proof of legal status rests with the accused: many foreigners, even South Africans, have spent months in prison like this, as their status can sometimes be difficult to determine.

3. Detention

60. Within the framework of the *Aliens Control Act* a person suspected of being in an illegal situation may be detained for successive periods of 48 hours on the authority of an immigration official, for as long as is necessary in order to determine his status. However, after the first 48 hours of detention the detainee must be informed in writing of the reasons for his continued incarceration. In practice, people are detained without any written explanation for often very long periods (there is no maximum detention period in law, neither before determination of the immigrant's status nor afterwards, and particularly while awaiting repatriation). Although, the law does provide for

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7/ Only 11 000 people have applied to date (an insignificant figure compared with the number of illegal persons in the country), according to H. Kotze and L. Hill, "Emergent migration policy in a democratic South Africa", in International Migration, Vol. 35, No 1, 1997.

8/ Certain immigrants (or citizens) "typed", or identifiable by their clothing, the languages they speak (Mozambicans, Zimbabweans, Nigerians, etc.) are apparently subjected to more frequent checks than others. A foreigner is any person who does not speak Zulu or who has vaccination scars high on the arm, vaccinations in South Africa being given lower down the arm.

the possibility of an appeal by the immigrant (i.e. the chance to present his case before the competent authorities) before repatriation takes place, this right is apparently never respected.

61. In addition, the conditions of confinement or detention are often difficult (police cells in particular are not suited to long periods of detention). Reports mention the poor food, the sharing of cells with people who have committed criminal acts, and harsh treatment by police officers (made all the more easy by the fact that the illegal persons' status makes it more difficult for them to gain access to official legal channels), all of which has apparently led to the death of a number of immigrants while in detention.

62. Recently, efforts have been made to improve the conditions of detention, at an experimental transit centre called Lindela, at Dyambu Youth Centre. The centre, which was visited by the Special Rapporteur, is some 100 kilometres from Johannesburg. It is managed by a private company, the Dyambu Trust, which has undertaken to convert huts formerly used by black South African miners into a detention centre for immigrants without papers. The company provides the detainees with accommodation, food and care. Eighteen officials of the Ministry of the Interior supervise the centre and carry out the formalities involved in admission, release and repatriation. The detainees can receive visitors, and have access to a telephone; also at their disposal is a large courtyard surrounded by high walls and guarded on the outside by specially trained dogs.

63. The centre houses a thousand people, 24 to a room. There are 48 men's toilets and 3 for 20 women. When the Special Rapporteur visited on 3 March 1998, the centre had just taken in 46 illegal immigrants including an Egyptian, an Indian and 46 Mozambicans. At that time the centre housed some 20 women. The illegal immigrants who arrive at the centre come from all parts of the country. They stay 5 days on average, the time it takes to organize their repatriation. Repatriation is done by train to bordering countries and by air to more distant countries. The detention period may take longer than a week if a migrant without papers refuses to give his nationality or the authorities in his country do not cooperate in his repatriation. The Special Rapporteur noted that only detainees from black Africa were present at the centre (mainly from Mozambique and Zimbabwe) and saw no Egyptian, Indian or European, contrary to what he had been told.

64. Other than the name of the company that runs it, which carries with it the illusory promise of a better future ("Dyambu" means rising sun in Venda), the Lindela centre does provide adequate facilities for the transit of people who appear to be relatively well treated. The managing company's contract expired in April 1998 and is being renewed. The company is planning to build a second transit centre to accommodate around 1000 people, which is an indication of the increasingly restrictive nature of South African policy on migrants.

65. Apart from the violence sometimes associated with the arrest and detention of illegal immigrants, it seems that the police are not always keen to assist in protecting immigrants against attacks from sections of the population (as illegal persons find access to legal channels difficult, police negligence is easily overlooked). Testimony from other sources has described the corruption that exists among the police officers and officials responsible for immigration

control (the sale of identity papers, the theft of goods belonging to repatriated illegal persons).

66. Another indication of the climate of violence towards immigrants is the fact that the SANDF is involved in the campaign against illegal immigration, and constantly calls for tougher measures to reduce the influx of illegal persons (border patrols are not sufficient), particularly the extension and reconnection in "fatal" mode (33 000 volts) of the electrified fence along the northern border.

C. A xenophobia towards Blacks

67. Research shows that since the 1994 elections xenophobia towards immigrants, particularly Africans, has increased steadily among the population, both Black and White 9/. It is evident in the common tongue, where the contemptuous terms "amakwerewere", "amagrigamba" and "amagongogo" (wogs) are used to designate foreigners 10/, and in the press, which holds illegal immigrants responsible for all the troubles of South African society (criminality, drugs, etc.). The " invasion by immigrants " syndrome well known in Europe and America can be found in South Africa, where it feeds into every fear, appearing as "Swart gevart" (the black peril, in Afrikaans) in the section of the press which still clings to the old ideas about Africans. In addition, the South African police encourage an atmosphere of manhunt and incrimination. Xenophobia is particularly prevalent in Gauteng (especially in Johannesburg, whose Hill Brow district is entirely occupied by foreigners of all nationalities), Mpumalanga and Cape provinces.

68. Foreigners suspected either rightly or wrongly of being illegal persons have been the victims of attacks, as in Alexandra township, near Johannesburg, in December 1994 and January 1995. For several weeks, gangs of South Africans fought violently to expel "illegal persons" accused of crimes, sex attacks, being unemployed and all kinds of social misdemeanours. That campaign, called "*Buyelekhaya*" (go home) was reportedly led by members of the ANC, the *South African Communist Party*, the *South African National Civic Organization*, the *Concerned Residents Group of Alexandra* and the *Alexandra Property Owners Association* 11/. The main targets of operation "Buyelekhaya" were

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9/ See Human Rights Watch, "Prohibited persons". Abuse of undocumented migrants, asylum seekers and refugees in South Africa, New York, London, March 1998, 236 p. A survey in October 1995 by the Centre for Socio-political Analysis of the Human Sciences Research Council shows that 68 % of South Africans are in favour of a more radical policy on illegal immigrants, which indicates growing negative feelings towards prohibited persons since the 1994 elections in all linguistic groups. Moreover, 55% of those who support a stricter policy on illegal persons state that the reason for their position is that the former are taking jobs from them and are responsible for South Africa's growing crime rate.

10/ These terms are used especially in the province of Gauteng, South Africa's largest urban area, which contains Johannesburg; "amagongogo" refers particularly to people from West Africa.

11/ Human Rights Watch, Prohibited Persons, op. Cit., p. 135.

Mozambicans, Malawites and Zimbabweans, some of whom were long-term residents of South Africa.

69. Other victims of popular xenophobia are foreign street hawkers (Chinese, Indians, Mozambicans, Nigerians, Senegalese, Somalis, Zimbabweans), against whom corporate organizations and others such as Micro Business against Crime, the Illegal Foreigners Action Group, the African Chamber of Hawkers and Independent Business and the Greater Johannesburg Hawkers Association issue threats and encourage boycotts and aggression. Some members of these organizations have taken action: in August 1997 in Johannesburg, South African street hawkers attacked their foreign counterparts, among whom were several Senegalese traders, beating them and destroying their stalls and goods while the crowd chanted "Phansi makwerewere" ("down with the foreigners").

70. One of the causes of this wave of xenophobia is the fact that under the apartheid regime, South Africa was cut off from the rest of the African continent and regarded itself as an outpost of Europe and its culture. Africans were depicted as savages and accomplices of the UN, which was held responsible for the economic sanctions imposed on the apartheid regime. The solidarity that Africans showed regarding the oppressed peoples of South Africa was little known to the majority of South Africans, kept unaware by the apartheid regime. Former South African refugees who have returned home after exile are alone in displaying tolerance and openness to the nationals of other African countries which welcomed them and supported their struggle against apartheid. After President Nelson Mandela came to power, it took the African Nations Football Cup in 1996 to make South Africans aware, via their television screens, of the other peoples and nations on their continent. The Special Rapporteur's mission took place during the 1998 African Nations Cup, an event which further familiarized South Africans with the other African peoples.

71. Another reason behind this attitude is the desire to prevent foreigners benefiting from the huge programme of redistribution of economic resources being implemented by the government. The fact is that the population, which can hardly accuse the government of not representing its interests, attributes all society's problems to the foreigners: unemployment, the increase in criminality, etc. The immigrants are accused of "taking" work intended for South Africans, of eroding union standards by accepting very low wages and deplorable working conditions, of benefiting from social services without contributing to them, and thus of undermining the government's reconstruction and development programme.

72. However, just as the statistics produced on numbers of illegal immigrants are not reliable, neither is the estimated cost of illegal immigration into South Africa 12/. The influence of illegal persons on the economy of the country must be evaluated by taking account of the following factors:

12/ The remarks of the Minister of the Interior, Mr. Buthelezi, that "illegal foreigners would cost the government R221 million [in 1995] and that the cost could reach R 1 billion in six years... The implications of these kinds of figures for the Reconstruction and Development Programme are quite awesome" have yet to be borne out.

(a) The majority have set up on their own account (trade, crafts) and are therefore not taking work from unemployed South Africans (estimated at 33 % of the active population), a situation only emphasized by the fact that they are concentrated in the unofficial sector of the economy. On the other hand, they are sometimes instrumental in job creation and the transmission of qualifications;

(b) Also, the fact that they are active in the official economy (agriculture, the construction industry) and work for low wages is less their fault than their employers', who regard them as easily exploitable 13/. Paradoxically, it is their status as illegal persons which provides employers with the opportunity to bypass the labour laws;

(c) They rarely make use of social services (health and education) for fear of being discovered and repatriated.

73. The widespread belief that illegal persons merely consume South Africa's socio-economic resources without producing any does not always stand up (they consume goods on which they pay VAT); it is their illegal status which prevents them from paying full contributions for public services (through income tax).

74. With regard to the supposedly high level of criminality among illegal persons, this is not reliable, as the fact that some clandestine foreigners have been arrested for criminal acts does not mean that all illegal persons are criminals. Consequently, the argument often put forward by the police that the measures to combat criminality should involve a "hunt" for clandestine foreigners persons must be treated with caution, even though it conforms with public opinion.

75. When finalizing his report, the Special Rapporteur was informed that on 3 September 1998, two Senegalese and one Mozambican were killed while trying to escape from a crowd of unemployed South Africans, who had threatened to kill them and accused them of "taking work from South Africans." The incident occurred on a train from Pretoria to Johannesburg. Two of the victims were electrocuted trying to escape through the roof of the train and the other fell onto the track. The Special Rapporteur informed the South African Government of the incident for its comments.

76. This growing xenophobia can also be found among political leaders in South Africa 14/, and can be explained by two factors:

13/ Some disgraceful practices by unscrupulous employers have been exposed: they sometimes employ illegal foreigners for a certain period, report them to the police so that they do not have to pay them, and then recruit a new group of fresher illegal foreigners!

14/ A study carried out by the Centre for International and Comparative Politics at Stellenbosch University (Kotze, H., "Illegal aliens-South Africa first" say decision makers) shows that a majority among the elites in most sectors of South African society support stricter measures on illegal immigrants. With the exception of the ANC, a majority among the elites of all parties agree on the fact that "it is not our duty to take in refugees from

(a) These leaders are echoing their electorate, which also gives them the opportunity to find a scapegoat for the consequences of the difficulties they are experiencing in finding an immediate solution to the country's socio-economic problems;

(b) The negotiations in the context of the transition to democracy. Responsibility for immigration rests mainly with two ministries, the *Home Affairs Department* (in the hands of the Inkhata Freedom Party) and the *Foreign Affairs Department* (which answers to the ANC). Before coming to power, many leading figures in the ANC owed their salvation to exile as the only alternative to imprisonment. Some of the party's leaders therefore now adopt a more relaxed policy towards illegal immigrants and do not hide their opposition to the treatment currently being meted out to foreigners. However, because of the numerous matters of national importance which attracted bitter debate during the constitutional negotiations (the ANC and the IFP clashed with particular fervour on the subject of regionalism), other matters considered to be of less immediate importance, such as immigration, have been sidelined somewhat as part of a "soft" consensus, in order to avoid further conflicts (this is why the ANC has not adopted a radical stance in the face of much of the IFP's policy under the iron fist of the Interior Minister, Mr Mangosuthu Buthelezi).

77. On the whole, it would seem that recognition of immigrants' rights is currently regarded, by both public opinion and certain politicians, as a luxury that cannot be afforded by a country of limited resources which also has urgent social problems emanating from the long years of oppression.

IV. MEASURES TAKEN BY THE GOVERNMENT

78. The government has set up a working group on international migration to discuss the problems relating to immigration into South Africa and find solutions. On 13 May 1997, the working group submitted its report to the Ministry of the Interior (*Draft Green Paper on International Migration*), in which it noted in particular that "the design and implementation of immigration policy must (...) be faithful to the new Constitution and the Bill of Rights. It must also be consistent with our commitment to upholding universal human rights, administrative justice and certain basic rights for all people who are affected by the South African State".

79. The working group maintains that "the challenge for South Africa is to transform a racially-motivated immigration/migration system into a non-racial and rational policy responsive to the objective needs of the country". It has rightly pointed out that, apart from political rights like the right to vote or certain economic rights like the right to practise a trade, occupation or profession, all other rights guaranteed by the South African Constitution and Bill of Rights apply equally to any person living in South Africa, and not exclusively to its citizens. Consequently, the basic rights of migrants without identity papers must be respected.

Africa." Moreover, all parties (including the ANC) support the idea that "South Africa should not relax its laws dealing with immigration by persons from southern Africa."

80. From 13 to 15 June 1997 the Ministry of Justice, in cooperation with Western Cape University and UNHCR, held an international conference on xenophobia which highlighted the problems facing South African society in its relations with foreigners. The Minister of Justice used the occasion to put forward a series of proposals -concerning research into the causes of xenophobia, legislation, education and information- intended to strengthen the fight against racism and xenophobia:

(a) With regard to the laws against discrimination, the Minister stated that it was "critical that refugees be specifically regulated under domestic law rather than treated as ordinary aliens", and that, whilst general discrimination was largely addressed, particular forms of discrimination should be rendered unlawful - i.e. racist and xenophobic offences as well as discrimination in employment and the supply of goods and services;

(b) With regard to education and information, the Minister emphasized that they could be used to intensify the fight against racism and xenophobia. "School curricula should be targeted in the field of history and research should be promoted into the nature, causes and manifestations of racism and xenophobia at local, national and regional levels. Training courses should be set up to promote cultural sensitivity, awareness of prejudice and knowledge of legal aspects of discrimination, for those responsible for recruitment and promotion procedure, and for those who have direct contact with the public or are responsible for ensuring that the persons in the organization comply with standards and policies of non-discrimination and equal opportunity. Finally, there should be mechanisms and instruments for independent inquiry into incidents and areas of conflict."

Proposals of this nature should help to establish a new human rights culture in South Africa that will be conducive to better treatment for foreigners.

V. ACTION BY CIVIL SOCIETY

81. Civil society is beginning a new conversion process, in order to progress from a strategy of combating apartheid and preparing for the arrival of democracy to adopting the vital role of watching over the government and taking action for the instilment of human rights in South African society. Nevertheless, organizations in civil society still pay insufficient heed to the human rights of foreigners. The church representatives whom the Special Rapporteur met acknowledged the need to extend a welcome to the nationals of other African countries. Owing to lack of resources, the churches are unable to launch anti-xenophobia awareness campaigns, external sources of funding having dried up since the end of apartheid. Moreover, they feel that the more urgent need is to improve the living conditions of South Africans.

82. Organizations such as the Institute for Democracy in South Africa (IDASA) provide a continuing forum for ideas from which emerge programmes aimed at developing democratic awareness among the South African population. IDASA also runs a critical eye over the government's administrative activities, and is not slow to submit proposals for improving its economic and social policy.

83. At Cape Town University, an intergovernmental organization is working on multilingualism: "Project Studies Alternative Education". This programme is concerned with education in the national languages. It is structured around the eleven official languages (see para. 35) including English and Afrikaans. According to the representative who spoke to the Special Rapporteur, the programme owes its genesis to the ackowledgement that the institutions of State are not used to multilingualism; that White majority institutions do not speak or use African languages; that English, Afrikaans and Xhosa predominate; and that the media do not use African languages, with the exception of the TV and radio programmes broadcast in Xhosa and Zulu. This is a pilot project, still at the experimental stage, which is concerned with education and the elimination of illiteracy for as many people as possible.

84. Some NGOs are working to strengthen communities' capacities to organize and their resources for influencing governmental or regional policy. Such is the case with the Provincial Parliamentary Programme (PPP), a joint initiative of IDASA, the Institute for Multi-Party Democracy(IMPD), Black Sash and Lawyers for Human Rights (LHR) in the province of KwaZulu Natal. The aim is to operate in the provincial parliament with a view to making the parliamentary process more transparent, effective and reflective of the population's interests. The Programme is also mounting a campaign to have the provincial parliament set up a local body concerned with human rights protection. Projects on political and legal training for members of other NGOs and basic community organizations and the dissemination of information through various publications are basic components of this organization's programme of action.

85. Finally, other NGOs such as the Community Dispute Resolution Trust (CDRT) are tackling the task of resolving the disputes which divide communities and individuals within communities, as well as political organizations, through dialogue, mediation and conciliation. It should not be forgotten that in KwaZulu Natal there were violent clashes between members of the ANC and Inkatha during the transition to democracy. The CDRT tries to bring members of both parties to the table and to help them resolve their disputes by non-violent means.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

86. South African society is changing rapidly. The complex socio-economic situation is characterized on the one hand by opposition to the changes from many among the White minority which holds economic power, and on the other by a rising tide of xenophobia, particularly towards Blacks from other regions of the African continent.

87. From the reform standpoint, South Africa is a vast blueprint for legislation intended to fully democratise society. The political intent of its leaders can be seen in the establishment of institutions inspired by pluralist liberal democracy and by the human rights principles proclaimed and furthered by the UN. But the socio-political burdens, the persistence of an apartheid culture which cannot be transformed quickly, limited financial resources and still inadequate human resources constitute a considerable hindrance, not to mention the need to take account of the time factor, with South Africans impatient to

taste the fruits of freedom even though the quiet revolution under way dates back only to 1994.

88. Long-term political resolve and education are necessary in order to ensure respect for human rights and success in the struggle against racism, racial discrimination and xenophobia. The South African people, by vanquishing apartheid, have proved they can succeed; we must now keep faith with them and help them to measure up to the dangers constantly being presented in different and subtle forms by racism, racial discrimination and xenophobia.

89. Whatever their status (legal or not) in the country where they live immigrants, by virtue of belonging to the human race, have certain rights such as those set forth in the International Bill of Human Rights (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights), and the Declaration on the Human Rights of Persons whose nationality is not that of the country where they live. Thus, the fact that a person has entered a territory illegally does not affect the rights to which he is entitled by virtue of those documents (signed by South Africa, although it has not ratified them): the right to life, to safety, to well-being, to equality before the law, and to detention which complies with the rules laid down by international and national standards.

B. Recommendations

90. The Special Rapporteur therefore makes the following recommendations:

1. To maintain the reconciliation process by continuing to encourage the commitment of those on the margins who refuse to take part;

2. To broadcast and teach the Constitution and human rights in all schools and through the mass media; to conduct a parallel campaign of civic education among the population with the aim of combating xenophobia and encouraging greater tolerance, in view of the increase and frequency of the xenophobia directed towards Blacks from other regions of Africa. In particular, immigration officials (police officers, civil servants) should receive instruction in human rights.

3. To adopt new immigration law which breaks away from the legacy of apartheid. Above and beyond basic compliance with the regulations provided for by law, the procedure should be improved, particularly with regard to the length of detention prior to repatriation (a time limit should be set for this, which is not the case at the moment). Detainees should have the right of appeal, to obtain legal representation (lawyer) and to have an interpreter provided by the State during official questioning; lastly, those detained while awaiting repatriation should be kept in detention centres other than those reserved for criminals, which is not always the case (particularly when they are kept for long periods in police cells).

4. Given the porous nature of the frontiers, the repatriation of illegal persons to their own countries is clearly an ineffective

means of dealing with illegal immigration (in 1994, only 90 000 illegal persons were repatriated out of the 2 million alleged illegal persons living on South African territory). The measure is purely a short-term one which takes no account of regional economic disturbances, economic factors being the main cause of immigration into South Africa - a situation all the more emphasized by the fact that Cold War conflicts have been settled in this area of Africa, with a resulting drop in the numbers of refugees 15/. South Africa should broaden its definition of the term refugee to include those immigrants from the SADC who are fleeing from economic instability in their countries caused in part by the destabilisation policy conducted by the South African Government in the sub-region (Zimbabwe, Mozambique, Angola) during the 1970s and 1980s. In broader terms, it must promote the concept that, in the long term, regional integration which includes free circulation of people and the harmonisation of socio-economic policy among the SADC member states is the only viable strategy for resolving the problems of migration to and from those countries, and not the current thinking which consists in saying that neighbours must seek to develop within their own borders and stop the emigration to South Africa.

5. To entrust the task of formulating coherent immigration policy to a special department which would take responsibility for matters relating to citizenship, naturalisation and immigration itself, so as to avoid the repressive influence brought to bear by the Ministry of the Interior on immigration matters;

6. To ratify the International Convention on the Elimination of All Forms of Racial Discrimination and adopt a law against racism and racial discrimination in line with the pamphlet entitled *Model National Legislation for the guidance of Governments in the Enactment of Further Legislation against Racial Discrimination* (a United Nations publication, No. HR/PUB/96/2) which has been transmitted to the government.

7. To pursue integration in the armed forces through more balanced representation of the different ethnic and racial groups, and to strengthen the civic education initiated in the armed forces.

8. To extend the teaching of civic education to all stages of school, university and professional training.

9. To facilitate and encourage the revival of the civil society which played an active and decisive role in the struggle against apartheid, but which now sees itself as abandoned and discarded;

10. To make Africa, and African countries, civilisations and cultures, more widely known by means of television programmes, research and

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15/ See in paragraph 53 the failure of the efforts to repatriate 120 000 Mozambican refugees.

publications, so that South Africans come to appreciate better their place as a part of that continent.

Annex

PROGRAMME OF THE MISSION

(25 February-4 March 1998)

During his visit to South Africa the Special Rapporteur met the following persons:

Cape Town
(25-27 February 1998)

Mr Dullah Omar, Minister of Justice, and Dr Manto Tshabala-Msimang, Deputy Minister of Justice

Mr F.S. Mufamadi, Minister of Safety and Security

Mr Zackie Achmat, President, National Coalition for Gay and Lesbian Equality

Mr Peter Pluddemann, Deputy Director, and Mr Xola Mati, Research Officer, Project Studies Alternative Education

Ms Christina Muray, Director, and Mr Francois Botha, Professor, Law, Race and Gender Division, University of Cape Town

Mr Vincent William, Manager of Southern African Migrants Project, and Ms Gitanjali Maharaj, Manager of Transformation and Equity Project, Institute for Democracy in South Africa

Mr Wilmot James, Executive Director, Institute for Democracy in South Africa

Johannesburg and Pretoria
(2-4 March 1998)

United Nations Country Team members: Mrs Scolastica Kimairo (UNICEF), Dr Yobert Shamapande (UNIC), Mr Dan Temu (UNDP), Mrs Enderson (UNAIDS)

Mr Josiah D. N. Ogina, Head of Mission for South Africa, International Organization for Migration; Mr Mendesha Kebede, Deputy Regional Director, and Mr Yusuf Hassan, Senior Regional External Relations Officer, UNHCR

Major General Jackie Sedibe (Ms), Director Equal Opportunity; Brigadier Martin Rutsch, Director Personnel Development; Brigadier John Lizamore, Director Research and Training, South African Defense Force

Mrs Venitia Govender and Mr Makubetse Sekhonyne, Human Rights Committee

Mr Adu Selby Baqwa, Public Prosecutor

Ms Zelda Holtzman, Head Equity Component; Ms Vanessa Gounden, Senior Superintendent; Mr Peter Cronje, in charge of Human Rights Education, South

African Police Service; Mr Amichand Soman, Director, Secretariat for Safety and Security

Mr Abdul S. Minty, Deputy Director General for Multilateral Affairs, and Dr Sharpe, Chief Director Social Affairs, Department of Foreign Affairs

Ms Faith Pansy Tlakula, Mr Jerry Nkeli, Mr Mogan Moodliar, Mr Lindelwa Ntutela, Mr Tseliso Thipungane, and Ms Jody Kollapen, Commissioners, South African Human Rights Commission

Judge A. Chaskalson, President, and Judge Pius Langa, Member, Constitutional Court

Ms Myriam Dooms, Mayor; Mr Philip du Plooy, Director, Governing Service; Mr Reeves M. Mabitsi, Member of the Executive Committee; Mr Pasty Malefo, Member of the Executive Committee, City Council of Pretoria

Mrs Charity Majiza, General Secretary; Rev Abraham Aja, Deputy Secretary-General; Mr Gary Thompson, responsible for Capacity Building; Ms Esther Matame, responsible for Human Rights Programme; Mr Lehlohonolo Bookholane, responsible for Faith and Mission, South African Council of Churches

Mr Isaac Mogase, Mayor of Greater Johannesburg

Durban
(4 March)

Ms Bess Pillerne, Coordinator, Lawyers for Human Rights; Ms Lunga Khumalo, Community Dispute Regional Organizer, Community Dispute Resolution Trust; Mr Mawethu Mosery, Centre for Socio-Legal Studies; Ms Belinda Darlerbe, Administrator, and Ms Penny Dlamini, Advocacy Support Coordinator, Provincial Parliamentary Programme

Mr Obed Mlaba, Mayor of Durban